This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Y4. D63/2: R13/10

RGER OF STREET RAILWAYS IN THE DISTRICT OF COLUMBIA

STANFORD LIBRARY SEP 2 1921 DOCUMENTS DIV.
54
STANFORD LIBRARIES
P113-74

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE MMITTEE ON THE DISTRICT OF COLUMBIA UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

THIRD SESSION

ON

S. 4973

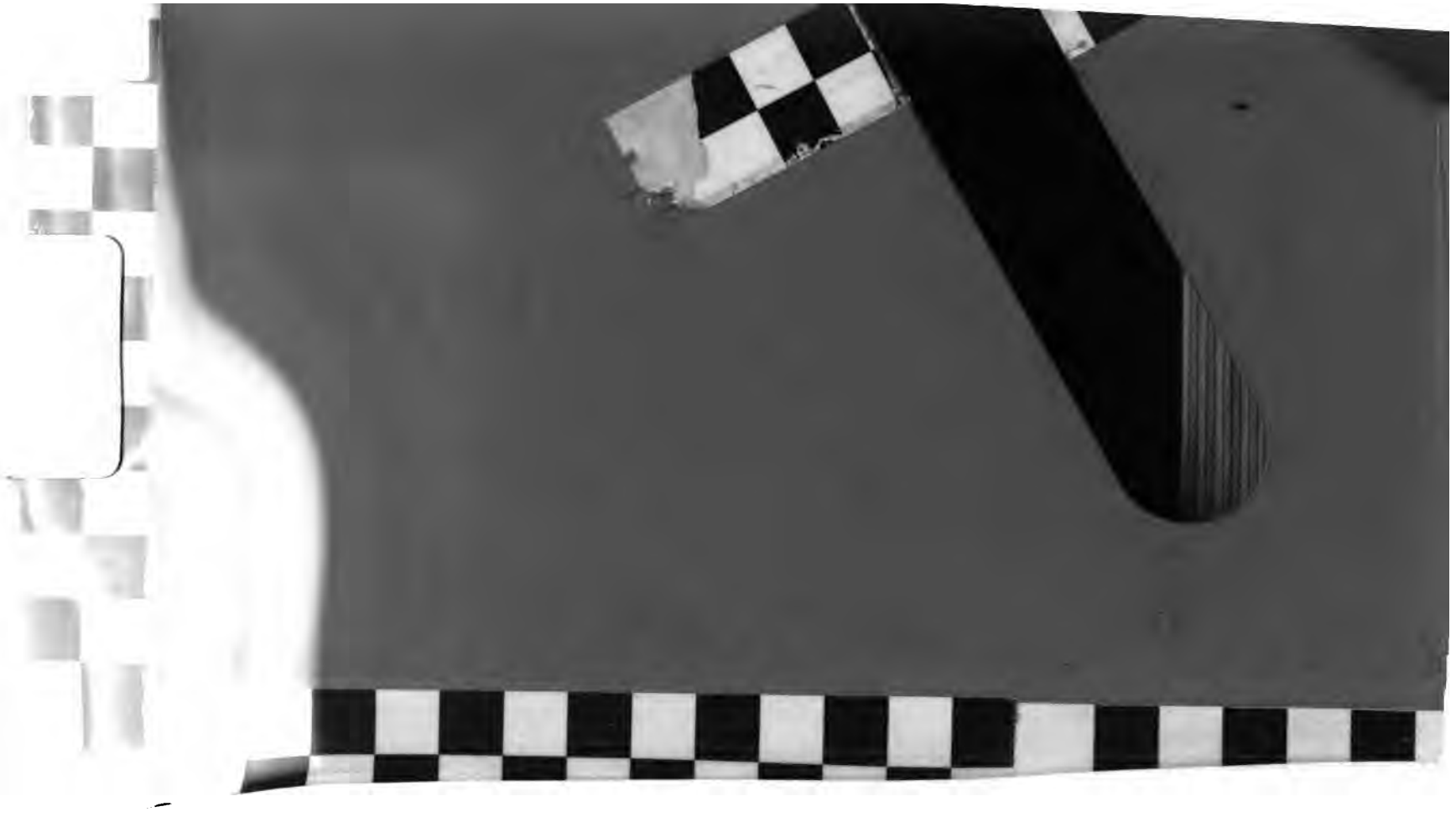
A BILL TO AMEND THE PROVISIONS OF AN ACT RELATING TO CERTAIN RAILWAY CORPORATIONS OWNING OR OPERATING STREET RAILWAYS IN THE DISTRICT OF COLUMBIA, APPROVED JUNE 5, 1905

Printed for the use of the Committee on the District of Columbia

---

APRIL 4, 1921

WASHINGTON
GOVERNMENT PRINTING OFFICE
46259 1921



Y4. D63/2: R13/10

MERGER OF STREET RAILWAYS IN THE DISTRICT OF COLUMBIA

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

THIRD SESSION

P113-74

ON

S. 4973

A BILL TO AMEND THE PROVISIONS OF AN ACT RELATING TO CERTAIN RAILWAY CORPORATIONS OWNING OR OPERATING STREET RAILWAYS IN THE DISTRICT OF COLUMBIA, APPROVED JUNE 5, 1905

Printed for the use of the Committee on the District of Columbia

---

APRIL 4, 1921

WASHINGTON
GOVERNMENT PRINTING OFFICE
46259 1921

COMMITTEE ON THE DISTRICT OF COLUMBIA.

LAWRENCE Y. SHERMAN, Illinois, *Chairman.*

WILLIAM P. DILLINGHAM, Vermont.
WESLEY L. JONES, Washington.
WILLIAM M. CALDER, New York.
HARRY S. NEW, Indiana.
L. HEISLER BALL, Delaware.
ARTHUR CAPPER, Kansas.
DAVIS ELKINS, West Virginia.
JOHN WALTER SMITH, Maryland.
ATLEE POMERENE, Ohio.
JAMES D. PHELAN, California.
WILLIAM H. KING, Utah.
MORRIS SHEPPARD, Texas.
CARTER GLASS, Virginia.

JAMES M. PORTER, *Clerk.*

SUBCOMMITTEE ON S. 4973.

L. HEISLER BALL, *Chairman.*

ARTHUR CAPPER. ATLEE POMERENE.

MERGER OF THE STREET RAILWAYS OF THE DISTRICT OF COLUMBIA.

MONDAY, APRIL 4, 1921.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 o'clock a. m. in the committee room, Capitol, Senator L. Heisler Ball presiding.

Present: Senators Ball (chairman), Capper, and Pomerene.

Also present, Hon. Benjamin K. Focht, a Representative from the State of Pennsylvania and member of the Committee on the District of Columbia of the House of Representatives.

Also present, Mr. William F. Ham, president Washington Railway & Electric Co.; Mr. Brainard H. Warner, jr., representing the Washington Railway & Electric Co.; John H. Hanna, vice president Capitol Traction Co.; Col. Charles W. Kutz, Capt. J. F. Oyster, and Hon. Cuno H. Rudolph, Commissioners of the District of Columbia; Hon. Francis H. Stephens, corporation counselor of the District of Columbia; Hon. William McK. Clayton, representing the Federation of Citizens Associations.

The CHAIRMAN. We have asked for this meeting that we might get a thorough understanding as to the railway conditions in Washington, from the different viewpoints of the citizens and the representatives of the different traction companies. I can assure you that this committee wants to do that which is best for the city of Washington. If it is best that these companies should be merged, we want them merged. If there are any reasons why they should not be merged we would like to have them presented to-day. I mean by that not only the companies that have been asking the merger, the electric light and power company and the Washington Railway & Electric Co., but also all of the trolley lines that do business in the District of Columbia. I understand there are one or two companies that are not taken in by the two main trolley lines. If you are going to merge the trolley lines, they should all be taken in under one system.

Have you anything to say, Senator?

Senator CAPPER. Nothing particularly, except that I am in sympathy with what you say. I find this feeling pretty general among Members of Congress that I have talked to, especially Senators, that the present situation ought not to go on much longer, especially as to the one company that seems to be paying a larger dividend than probably most any other traction company in the country engaged

in a similar line of business, and the public still paying an 8-cent fare. There is a good deal of feeling along this line, and I feel that they ought to get together on some sort of a basis that will be fair to each company and fair to the public. They believe the present situation is not fair to the public. That feeling is very strong among Senators and Congressmen. I think it is also strong among the people.

The CHAIRMAN. I would like to add this: That I appreciate that the company doing business in the suburban part of Washington necessarily would not reap the same revenue that the company would that is doing business only in the thickly settled part of Washington. Yet I appreciate if you are going to develop your city you must continue to give proper service to the suburban part of the city. That is necessary for the future welfare of the city, and any action that is taken ought to be taken with that view always in mind.

Do the commissioners care to make a statement?

STATEMENT OF COL. CHARLES W. KUTZ, CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION.

Col. KUTZ. Mr. Chairman, when I appeared before the committee about a month ago we urged or stated that we had no inherent objection to the merger of the Washington Railway & Electric Co. and the Potomac Electric Power Co. as contemplated by the France bill, if all the street railways were owned and controlled by the merged company. We join hands with you in urging that the railway company be permitted to merge with the power company. We think that is the wise and economical way to handle the street railway situation. Our only purpose in suggesting that the two questions be linked up together was feeling that what we had in mind as the ultimate goal was a merger of all the street railway companies, and that we ought not to lose sight of that fact in our effort to improve the financial condition of the Washington Railway & Electric Co. alone. For that reason we urged in lieu of the France bill sections 1 and 2 of the Woods bill, which, as you know, provides first for a merger of the street railway companies, that merger to be subject to the approval of the Public Utilities Commission, and then that merger having been effected in section 2 the bill provides for the merger of that merged united street railway company with the power company, unconditionally.

But whether the commission's plan be followed or the plan contemplated by the report of the Senate committee made in the closing days of the last session of Congress, whichever plan may be adopted we feel that that proposed legislation in itself would not have the effect of bringing together the street railway companies, and, therefore, we suggested the two be authorized or provided for simultaneously, so that not only would the power company come into the absolute control of the Washington Railway & Electric Co., but that the Capitol Traction Co. would come in at the same time.

The CHAIRMAN. Your idea is that all the mergers should take place at the same time or that the railway companies should merge first?

Col. KUTZ. Either would be entirely agreeable to us.

The CHAIRMAN. The bill we reported to the Senate provided that the electric light and power company and the Washington Railway &

Electric Co. should merge, on condition that the other merger was to be permitted afterwards.

Col. KUTZ. Yes; permitted only.

The CHAIRMAN. Congress can not compel, as I understand it, the merger of the companies.

Col. KUTZ. No; but the merger of the Washington Railway & Electric Co. and the Potomac Electric Power Co. is considered to be an advantage to the owners of that company. They want it, they are seeking it, and we felt that they were coming to Congress and asking for a privilege. Now, our thought was that that privilege should be granted them, provided at the same time they also merged with the Capitol Traction Co. In other words, we wanted to accomplish the merger of the street railway companies, and in return for that merger give them this privilege which they now seek at the hands of Congress. Whether that be done in two steps, as contemplated by the Woods bill, or whether it be done simultaneously, in one step, is a matter of legislation concerning which we have no thought.

The CHAIRMAN. You will permit questions as we go along, so that we may have a thorough understanding, will you not?

Col. KUTZ. Certainly.

The CHAIRMAN. Is it your judgment that the Washington Traction Co. would not be placed at any disadvantage in merging, if they are compelled to merge, to have the light and power plant merged with them?

Col. KUTZ. I do not think so, bearing in mind the fact that they own every share of stock in the Potomac Electric Power Co. It is one of their assets which is to be taken into consideration in the merger. They would not own a dollar's worth more property.

The CHAIRMAN. I do not think you get my point. They are placed at rather a disadvantage with the other company, because really to save their life they have got to merge, while if they had all their own property merged together probably they would not be in such an unfavorable position.

Col. KUTZ. By the merger they can not increase the amount of their physical property or increase their assets in any way. Our thought was whichever plan of merger might be adopted, whether that as suggested by the commission or that embodied in the report of this committee, that there should at the same time be enacted legislation which will tend to bring these companies together into one single corporation, and after a very careful consideration of the subject not only by the present commission but by its two predecessors in office we have thought that the best way was to impose an excess-profits tax so as to bring their earnings within reasonable range of each other.

Our thought in the matter—and it is not an original idea with the commission but is taken from the Esch-Cummins railroad bill. We suggested it to the House committee a year ago. We adopted it because it had then been adopted by the Senate of the United States, and we thought that if it was a good rule to apply to the railroads of the country, where their earnings vary greatly, from very profitable roads to very poor roads, that the same rule might be applied to the street railways in Washington, where we have on a very small scale the same problem.

Senator CAPPER. Could you apply that to the Potomac Electric Power Co., if the merger was brought about?

Col. KUTZ. No; it was not our thought to apply it to the power company but would apply it to the street railway companies.

The CHAIRMAN. Your idea was to apply it to the two street railway companies?

Col. KUTZ. Yes; to apply it to the two street railway companies. in the Esch-Cummins bill it provides for a return of 5 per cent and a conditional return up to 6 per cent. We suggested originally that the 4 per cent tax on gross receipts be abolished and in lieu that the companies be permitted to earn without taxation up to 6 per cent on the fair valuation of their property and between earnings of 6 per cent and 7 per cent 50 per cent should be paid as a tax on that excess profit above 6 per cent.

The CHAIRMAN. Where would that tax go—into a fund that would be used to bring the other company up?

Col. KUTZ. No. After objection was raised to that, we were proposing to pay that into the Treasury of the United States, just as the 4 per cent tax on gross receipts is paid into the Treasury. It would become a part of the revenues of the United States.

Then, above 7 per cent our original bill contemplated taking away 75 per cent of the earnings. Then, in the bill that we have since considered we have felt that probably was unreasonably drastic.

Senator POMERENE. When you say "we" considered, whom do you mean?

Col. KUTZ. I mean the Public Utilities Commission.

Senator POMERENE. The present commision?

Col. KUTZ. I do not know that I voice absolutely the views of the present commission, but I think they agree with me in feeling that instead of having two rates of 50 and 75 per cent, it is best to adhere to only the 50 per cent tax. Whether the starting point of that 50 per cent tax be 6 or 7 is a question. My own thought was that 6 per cent would be a good starting point for that excess-profits tax.

Senator POMERENE. Do I understand that it is the plan of your bill that while you levy this excess-profits tax you also continue to tax their gross receipts as heretofore?

Col. KUTZ. No. Our thought was to abolish that tax and to substitute for it this excess-profits tax of 50 per cent.

The CHAIRMAN. How would that help the weaker road or help the rates of fare?

Col. KUTZ. If that rule had been applied to the earnings of the two street car companies last year, it would have increased the revenue of the Washington Railway & Electric Co. about $225,000.

The CHAIRMAN. That excess of 50 or 75 per cent is not going to benefit the weaker lines.

Col. KUTZ. No, sir; but they are relieved from the payment of the present tax they now pay on gross receipts. Mr. Ham will correct me if I am wrong, but I think last year that was something like $225 000.

The CHAIRMAN. It relieves them of the tax, but it does not help them otherwise.

Col. KUTZ. No, sir. At the same time it greatly increases the tax of the Capitol Traction Co., the tax that company now pays.

Our computation was that if that tax had been applied in 1920, instead of one company earning about 5 per cent and the other company earning about 11 per cent, one company would have earned slightly in excess of 6 per cent, and the other company slightly in excess of 7 per cent. In other words, instead of a range of six between the rates of return there would have been a range of about one, and with that comparatively small difference in the earning power, we felt there should be no serious obstacle to their getting together in the form of a merger.

Now, there has been another suggestion made that appeals to me as a wise one. Some objection has been voiced, and it was from the House committee, against permanent substitution of the excess-profits tax for a tax on gross receipts. So in the bill we have formulated now we provide that when these companies are merged the excess-profits tax shall be automatically abolished, and they shall automatically return to the 4 per cent tax on gross. In other words, the excess-profits tax is not suggested as a substitute for the tax on gross because it is inherently a better form of taxation, because there are objections to it. There is the possibility of padding of operating expenses and undue increasing of wages and salaries.

Senator POMERENE. As the Public Utilities Commission has charge of that, why can they not check it?

Col. KUTZ. We can check it indirectly, Senator Pomerene.

Mr. CLAYTON. They can not check wages.

Col. KUTZ. We have no direct control.

Senator POMERENE. They can have some check on wages. To take an extreme case, they can not say the wages must be $1,000 a month for each man, and have the public pay that. There must be some means of doing that.

Col. KUTZ. I simply cited that as one of the objections to an excess-profits tax—that there is the possibility of building up operating expenses for the purpose of evading a part of that tax. I don't mean to imply that these two companies would resort to such procedure.

Senator POMERENE. I see the force of that objection.

Col. KUTZ. But to meet the objection that was raised in the House committee to the permanent substitution of an excess-profits tax for a tax on gross receipts we suggest that it be applied only so long as the companies remain under separate and distinct ownership, but when they have taken advantage of the authority conferred on them by the proposed law, then this excess profits tax shall cease, and they shall revert to the 4 per cent tax on gross.

Senator CAPPER. Your plan continues the present street-car fare indefinitely, does it not?

Col. KUTZ. On that basis the present fare would continue until the merger had been effected, unless by reason of reduced operating expenses, which we think are bound to come, we would be justified in making a different rate. But on the assumption that the wages of motormen and conductors and the cost of all the material that goes into the upkeep of the roads continue as at present, the present fare would continue; but we look for a drop not only in wages, but in the price of material, and when that time comes there will undoubtedly be a reduction in car fare. Even under the present inadequate arrangement we could do that.

With the idea of presenting our views in concrete form, we have taken what is known as the Woods bill in the House and have suggested certain modifications in that bill, which we would be glad to submit to the committee for its consideration, but it follows the lines I have just outlined.

The CHAIRMAN. That may be inserted in the record at this point.

(The bill referred to is here printed in full, as follows:)

[H. R. 13722, 66th Cong., 2d sess.]

A BILL To further regulate certain public service corporations operating within the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Capital Traction Company, the Washington Railway and Electric Company, the Georgetown and Tennallytown Railway Company, the Washington-Interurban Railroad Company, and the City and Suburban Railway of Washington are hereby authorized to merge or consolidate all and singular their respective corporate rights, privileges, and franchises and all their respective works and properties, real and personal, tangible and intangible, into one corporation and property for the ownership, management, control, and operation of all their said works, properties, rights, privileges, and franchises under such corporate name as may be adopted under the following conditions:

(a) The said corporations may, by agreement in writing assented to by at least three-fourths of the owners of record of the capital stock of each of them, agree to merge and consolidate into a single corporation and to own and operate all the rights, estates, works, properties, and franchises aforesaid owned by them under such corporate name as may be adopted and stated in said agreement and upon such terms and conditions not contrary to the provisions hereof as they may agree upon, but subject to the approval in writing of the Public Utilities Commission of the District of Columbia. Upon the exceution of the said agreement in writing and its approval by the Public Utilities Commission and the lodging thereof in the office of the recorder of deeds for the District of Columbia for record as hereinafter provided, the said merger and consolidation shall be complete and the merged or consolidated corporation shall be and become a body politic and corporate under the name so agreed on. It may sue and be sued thereby; may adopt and have a common seal and may change the same at pleasure, and shall have, own, and possess all and singular the rights, privileges, and franchises of each of said corporations parties to said agreement, their works and properties, and may own, operate, control, and mortgage[1] all the said estates, works, properties, rights, and franchises of the several corporations merged, and shall be subject to all the duties, restrictions, and obligations imposed by law upon the several corporations whose estates, rights, and franchises it acquires pursuant to the provisions of this act except as the same may be modified by this act.

(b) The approval of the stockholders herein provided for may be given by the consent in writing of the owners of record of three-fourths of the capital stock of each company parties to said agreement or by the vote of the owners of three-fourths of the capital stock of each of such companies represented at a special meeting called and held as prescribed by the by-laws of the several companies or by law. When a certificate shall be filed with the Public Utilities Commission of the District of Columbia, signed and acknowledged by a majority of the board of directors of each of the corporations to be affected thereby and certified under the seals of each of said corporations showing the agreement for consolidation and merger and all of the terms thereof and its conformity with the provisions of this section, such certificate shall be presumptive evidence of the facts therein set forth, and thereupon said Public Utilities Commission shall approve or disapprove the same and certify its action thereon by certificate to be attached thereto under its seal, and if approved it shall forward the same with the certificate of its approval thereon to the recorder of deeds of the District of Columbia, who shall endorse thereon the day and hour of its receipt and record the same in his offices. If the commission shall disap-

[1] This word should be "manage"; see paragraph (d), where authority is given to xecute mortgages. (Col. Kutz.)

prove the same, its action thereon and a statement of its reasons therefor shall be forwarded to each of the corporation parties to said agreement.

(c) Within fifteen days after the filing of such certificate with the recorder of deeds of the District of Columbia, a notice shall be mailed to each stockholder of record in each of such corporations by the merged or consolidated corporation, setting forth the time when and the place where such certificate was filed; and if within thirty days after the mailing of such notice any stockholder or any of the companies affected thereby shall give notice in writing to the merged or consolidated corporation that he dissents from such contract, it shall be the duty of the merged or consolidated corporation within sixty days after the filing of such certificate to institute a proceeding for the appraisement of the shares of all of such dissenting stockholders. If any stockholder shall omit to give such notice of dissent within the period herein limited, he shall be deemed and taken to have assented to such contract. The said proceedings for appraisement may be begun by filing with the Supreme Court of the District of Columbia a petition setting out the names and addresses of record of each of the dissenting stockholders, with the number of shares, the name of the company in which they were held, and the par value thereof, and any other pertinent facts, and praying for proper process against said dissenting parties and the appointment of three persons to appraise the value of all such stock.

The court shall thereupon direct such process to issue, by order of publication or otherwise, and upon its return duly executed shall appoint three such appraisers and designate the time and place for their first meeting. The court may fill any vacancy in the board of appraisers occurring by the refusal or neglect to serve or otherwise. The appraisers shall meet at a time and place designated, and after being sworn honestly and faithfully to discharge their duties they shall appraise the stock of each dissenting stockholder at its fair value without any regard to any appreciation or depreciation thereof as a consequence of such merger and consolidation, and said award when confirmed by the court shall be final and conclusive on all parties. The charges and expenses of the appraisers shall be paid by the merged or consolidated corporation. If anyone entitled shall refuse to accept the amount awarded him, or if for any reason it shall be impossible to make payment of the amount of the award to such person entitled to receive the same without unreasonable delay, the court may direct the same to be deposited in court. When the said company shall have paid or deposited in court the amount fixed by the appraisers as the value of the shares of the dissenting stockholder or stockholders, such stockholder or stockholders shall cease to have any interest in the said appraised stock or in the property or franchises represented thereby and the marged or consolidated corporation shall receive back from the proper corporation whose estate, rights, property, and franchise it has acquired that portion of the consideration for such merger and consolidation or the proceeds thereof which otherwise would have been distributed to such dissenting stockholder.

If such payment or deposit is not made within thirty days after the confirmation of the appraisal, the amount of the award with interest from the date of confirmation shall be a judgment against the said merged or consolidated corporation and may be entered, docketed, and collected as other judgments in said court are by law entered, docketed, and collected. If the said company shall omit to institute the proceedings hereinbefore required within the time hereby limited, any stockholder giving such notice may institute such proceeding by a proper petition on his own behalf or at the election of such stockholder the estate, rights, property, and franchises of the corporation in which he was a stockholder shall revest in such corporation and the consideration received therefor shall be repaid to the said merged or consolidated corporation.

(d) Such merged or consolidated corporation is hereby authorized, subject to the approval of the Public Utilities Commission, to issue such stocks and bonds or other evidences of indebtedness and to execute such mortgages, deeds of trust, trust agreements, or other securities as may be necessary for the purposes.

(e) Such merged or consolidated corporation is hereby authorized to finance needed additions and improvements to its property and equipment or to retire outstanding bonds or other indebtedness by the issuance and sale or exchange therefor of additional stocks and bonds or other evidences of indebtedness under the same limitations as are provided by existing law for the issuance of additional bonds: *Provided*, That the certificate of the Public Utilities Commission showing authority for such issue shall first be obtained.

SEC. 2. That the merged corporation provided for in section 1 is hereby authorized and empowered to acquire, hold, manage, and operate the Potomac Electric Power Company, and the Potomac Electric Power Company is empowered to transfer to it all and singular the rights, privileges, and franchises and all other property, real and personal, tangible and intangible, of the Potomac Electric Power Company, provided such transfer and acquisition are agreed to by the respective boards of directors of each of said companies in writing and is approved by a vote of the owners of three-fourths of the capital stock of each of said corporations. This written agreement, approved as aforesaid, shall be filed with and such filing certified by the Public Utilities Commission, and thereupon shall be filed in the office of the recorder of deeds for the District of Columbia, duly certified under the seals of the said corporation and of the Public Utilities Commission, and the said recorder of deeds of the District of Columbia shall forthwith record the same in his office, and thereupon all and singular the rights, privileges, and franchises and all the property, real and personal, tangible and intangible, of said Potomac Electric Power Company shall vest in and be held, enjoyed, owned, exercised, managed, operated, and used by the said merged or consolidated corporation, its successors and assigns, and all debts due and all choses in action of whatever kind belonging to said Potomac Electric Power Company shall be taken and deemed to be thereby transferred to and vested in said merged or consolidated corporation, its successors and assigns, without further act or deed, as effectively as they were of the Potomac Electric Power Company: *Provided, however*, That the rights of all creditors of the Potomac Electric Power Company and all liens upon its property and every part and parcel thereof shall be preserved unimpaired and all the liabilities and duties of said Potomac Electric Power Company existing at the time of transfer shall thenceforth attach to the said merged or consolidated company and said property in its hands and be enforced against it and said property to the same extent as if the said debts, liabilities, and duties had been incurred or contracted by or imposed on it originally, and all of the outstanding stock of the said Potomac Electric Power Company shall thereby stand annulled and canceled and no other securities or consideration shall be issued or paid for said transfer, and any suit then pending in any court of the District of Columbia by or against the Potomac Electric Power Company may be abated as to it and proceeded with against the said merged or consolidated corporation.

Provided, That nothing contained in this act shall be construed to affect the proceedings for the valuations of the several component companies which may be merged or consolidated under the provisions of this act, but such proceedings and actions and suits now pending shall proceed to final decision in the names of the now existing companies; and the fair value of the property of the merged or consolidated corporation used and useful for street railway and electric power operations within the District of Columbia shall be the sum of the fair values of the several companies which may enter into the merged or consolidated corporation aforesaid as finally ascertained plus any additions subsequently made.

SEC. 3. That section 3 of the act of Congress approved June 24, 1898, entitled "An act to define the rights of the purchasers of the Belt Railway, and for other purposes," which requires the Commissioners of the District of Columbia to maintain special policemen at street railway crossings and at intersections at the expense of said railway companies is hereby repealed, effective June 30, 1921, and the expense of maintaining such policemen shall thereafter be borne in the same manner and from the same funds as the expense of other policemen in the District of Columbia is paid, and the employment by the District of Columbia after June 30, 1921, of said street railway crossing policemen is hereby authorized.

SEC. 4. That so much of section 5 of the act of Congress approved July 1, 1902, and such other provisions of law as impose a tax of 4 per centum upon the gross receipts of street railway corporations operating within the District of Columbia be, and the same are to that extent hereby, repealed, effective June 30, 1921, and beginning July 1, 1921, each such corporation operating within the District of Columbia shall pay annually to the District of Columbia in lieu of all other taxes on personal property and franchises a tax based upon its net operating income as follows: Upon net operating income in each year in excess of 6 per centum of the fair value of the property of each company used and useful for the public service within the District of Columbia as ascertained by the Public Utilities Commission of the District of Columbia under the

provisions of section 8 of the act of Congress approved March 4, 1913, entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes," a tax of 50 per centum per annum of such excess. The said tax shall be based upon the operations of each calendar year, except for the calendar year 1921, in which it shall be based upon the operations of the last six months of that calendar year.

The term "operating income" as used herein bears the meaning now attached to it in the uniform system of accounts for electric railways as prescribed by the Interstate Commerce Commission, but its component elements, accounts numbered two hundred and one, two hundred and two, two hundred and thirteen, and two hundred and fourteen, shall include only revenues and expenses properly assignable to street railway operations within the District of Columbia by the said Public Utilities Commission, and from account numbered two hundred and fifteen there shall be excluded the tax on operating income herein provided for.

On or before March 1 of each year each such company through its president or other chief executive officer shall make affidavit to the board of personal tax appraisers of the District of Columbia as to the amount of its net operating income for the preceding calendar year ascertained in the manner herein provided. All taxes levied under the provisions of this act shall be assessed and collectible as are other personal taxes, and when paid to the collector of taxes shall be deposited in the Treasury of the United States as are other taxes collected within the District of Columbia; and each of such companies, their respective presidents or other chief executive officers, shall be subject to the same penalties for failure to make the affidavits above provided for within the time prescribed and for making false affidavits in relation thereto and for nonpayment of said taxes when due as are now provided for similar offenses, respectively, by the personal tax law of the District of Columbia for the collection of such taxes. The real estate of such public service corporations shall be taxed as other real estate in the District of Columbia is taxed, provided their tracks, conduits, cables, and underground and overhead structures and appurtenances shall not be taxed as real estate.

SEC. 5. That all provisions of law making it incumbent upon any street railway company within the District of Columbia to bear any of the expenses incident to laying new pavements or the permanent improvement on streets or highways occupied by its tracks within the District of Columbia between the outer rails of its tracks and for a space of two feet on each side thereof, are hereby repealed, but all such companies shall be and are hereby required to repay to the Commissioners of the District of Columbia the entire cost of ordinary repairs to the pavements within such spaces within ten days after presentation of proper bills therefor, and any such bill not so paid shall constitute a lien on the property of the company so in default from the time the work was done, and the amount thereof may be recovered with interest by the Commissioners of the District of Columbia before any court of competent jurisdiction.

SEC. 6. That the Washington Gas Light Company is hereby authorized and empowered to acquire, hold, manage, and operate, and the Georgetown Gas Light Company is empowered to transfer to it all and singular the rights, privileges, franchises, and all other property, real and personal, tangible and intangible, of the Georgetown Gas Light Company under the same terms and conditions as are prescribed in this act for the consolidation of the railway and power companies.

SEC. 7. That public-utility corporations under the jurisdiction of the said public-utilities commission are hereby authorized to finance needed extensions of their respective properties by the issue of additional stock and classes of stock, under the same limitations as provided by law for the financing of such extensions by the issue of additional bonds, provided they shall first have obtained the certificate of the said commission showing authority for such issue from the said commission.

SEC. 8. That the authority hereby given to the several street railway companies mentioned in section 1 herein to merge and consolidate their respective properties into a single corporation is for the purpose of providing a single street railway and electric light and power system for the District of Columbia, and nothing in this act contained shall be considered as giving, directly or indirectly, the authority for a merger or consolidation of a less number of said companies than those named in said section 1 herein: *Provided*, That after the consolidation or merger of the several street railway and electric light and power compan-

herein authorized shall have been effected, the tax on the net operating income of the several street railway companies imposed by the provisions of section 4 herein shall cease and determine and in lieu thereof a tax of 4 per centum per annum on the gross receipts of the merged or consolidated corporation shall be imposed, paid, and collected in the manner now required by law of street railway corporations.

SEC. 9. That all laws or parts of laws inconsistent or in conflict with this act are hereby repealed.

SEC. 10. That Congress hereby reserves the right to alter, amend, or repeal this act or any part thereof.

The CHAIRMAN. It has been stated at hearings held heretofore that Congress could not compel a merger of the companies. Would they not have the same right to compel a merger of the street railways as they had to force a merger of the different railroad companies?

Col. KUTZ. Yes.

Senator POMERENE. They have not done that. The compulsory provision was in the bill at one stage of the proceedings, but afterwards we came to the conclusion that there was very serious doubt of our right to compel it, and we provided for a voluntary consolidation.

The CHAIRMAN. I was under the impression it provided for a merger within a number of years.

Senator POMERENE. Some of those provisions were taken out. There is not anything in the bill except permission to voluntarily consolidate under plans which are to be approved by the Interstate Commerce Commission.

Col. KUTZ. But we assumed the excess-profits tax provided for in this bill was for the purpose of rather forcing the merger; that is, making it attractive.

The CHAIRMAN. Under your plan why could not this surplus of 50 per cent over 6 or 7 per cent of the one company be applied in some way to render assistance to the other company, so as to bring their revenue up to a certain percentage, so that the people who have to pay this 8-cent fare might receive some benefit from it? Of course, it is the duty of this committee, as I see it, to try to provide reasonable fares for the people of the District. In doing that we have got to protect the companies, of course, that they may be able to extend and improve their lines and give better service.

Col. KUTZ. As the bill was submitted a year ago, we did provide in a way for the use of that fund created by the collection of this excess-profits tax, and there, too, we followed the Esch-Cummins railroad bill. We provided that the excess-profits tax should be covered into the Treasury in the form of a special fund, known as the street railway contingent fund, and that fund might be used for one of three different purposes. It might be used for making needed extensions, which the companies themselves were unable to finance. It could be used for the purchase of additional equipment to be turned over to these companies for operation at a reasonable rental. It provided for the use of this fund as loans to existing companies who were unable to otherwise borrow money at reasonable rates of return. That was eliminated from our subsequent legislation on account of objections that were raised to it in the House committee, and we felt that while that was desirable still it was not the most important feature of the bill. I still feel that would be a desirable use to make of that fund.

Mr. CLAYTON. We fear the test of the courts of a provision of that kind, which would tie up things, anyway.

Col. KUTZ. We also embodied in this bill, as Mr. Woods did in his bill, the provision that the railway companies should be relieved from the expense of maintaining special traffic-way crossing policemen. Each company now pays something like $60,000 to $80,000 a year, in round numbers, for street railway crossing policemen. We believe that the traffic at street railway intersections consists not only of street cars but of vehicles as well and that this policeman is needed there not solely for the street railway traffic but for the general traffic of the city, and we think the cost of maintaining those men should be borne by the city and not paid for wholly by the street car riders of the community.

The CHAIRMAN. Do they pay the entire salaries of those men?

Col. KUTZ. Yes. Mr. Ham can give you the figures.

Mr. HAM. I think our figures are about $60,000, and probably the Capital Traction Co. is somewhat less.

Col. KUTZ. $60,000 for each company.

I think there is another feature which tends to keep fares higher, and that is that under existing law the companies must pave the roadway between the outer rails and for 2 feet exterior to the outer rails.

The CHAIRMAN. Is that not the usual and customary law in all cities?

Col. KUTZ. It is one of the recommendations, I think, of the Federal commission which was appointed by President Wilson that the companies be relieved from that burden. That burden was very properly imposed when the cars were horse drawn and the space between the rails was worn by the steady tramp of these horses drawing the cars.

The CHAIRMAN. But even now, does not the weight of the cars depress the street and interfere with its repair on either side of the rails?

Col. KUTZ. It does, in a way, particularly if there is not an adequate foundation provided. There is a certain wear on the pavement due to the vibration of the rails, but we are not proposing to relieve the companies of the cost of maintaining the pavement, but only from the cost of the original or new paving. That is a particularly heavy burden on the Washington Railway & Electric Co. at the present time, because the commission is making an effort to permanently pave these arterial highways leading into the District.

Senator POMERENE. I do not see the force of your position there. Of course, I recognize the fact that if you add burdens to the company you must take that into consideration in fixing the fare, but the wear and tear of this company upon the pavement, while that may be a reason why they perhaps should keep up those repairs, I can not differentiate between that and original construction. Assume the life of a pavement to be 10 years, and you are compelled to relay it afterwards. That is just as much new construction as the original.

The CHAIRMAN. I would like to call the Senator's attention to one matter in that connection. In order to have these companies extend their lines into new districts, sometimes it requires a great deal of new paving, and that is a very heavy burden on the companies. I re-

member my own experience along that line. I was connected with a trolley company in Wilmington, and it almost broke the company up to meet the heavy expense of street paving.

Col. KUTZ. Now, Mr. Chairman, in the Woods bill and in the bill we have recently formulated we have made provision with respect to the gaslight companies. That is public-utilities legislation which we thing ought to be enacted, and if any legislation is to be enacted in behalf of street railways and electric light companies we think that at the same time you should write in two provisions which will do much for the benefit of the gas industry. We have two gas companies in Washington—the Washington Gas Light Co. and the Georgetown Gas Light Co.

The CHAIRMAN. Do they compete directly with each other?

Col. KUTZ. No. The Washington company owns all of the stock of the Georgetown company, just as the Washington Railway & Electric Co. owns all of the stock of the Potomac Electric Power Co., but they are not permitted under existing law to merge their identities. They must maintain two separate corporate entities.

The CHAIRMAN. Can you give any reason why the legislation provided at that time for entirely separate organization of these companies?

Col. KUTZ. Do you mean the Washington Railway & Electric Co. and the Potomac Electric Power Co.?

The CHAIRMAN. I mean the gas companies. Perhaps the same reasons apply to the other company.

Col. KUTZ. The gas companies cover different parts of the District of Columbia. They do not occupy the same territory.

The CHAIRMAN. Was the law prohibiting the merger passed before the establishment of public utility boards to regulate their rates?

Col. KUTZ. I do not think there is any specific legislation in the case of the gas companies similar to the legislation in the act of 1900 concerning the Washington Railway & Electric Co. and the Potomac Electric Power Co. They were created as separate corporations and under what is known as the La Follette antimerger provision, which is a part of our public-utilities law, they can not completely merge. They are one company in fact, and it is an unnecessary expenditure to maintain the fiction of two separate corporations, and we think that in the interest of the community and the companies the two ought to be merged.

The CHAIRMAN. Before you had a public-utilities commission the public generally thought the only way to maintain a reasonable price was to permit general competition: but I think everybody is satisfied now, with respect to public-utilities corporations, that competition is not a good thing; that a city supplied by one plant is very much better off than a city supplied by three or four; that we have public-utilities boards that regulate the prices and protect the public, and at the same time are supposed to protect the corporations; and that the overhead charge is very much less for one concern to supply that public utility than it would be for two or three different concerns. Now, I suppose that law was passed before you had your public-utilities board, when the only regulation was competition?

Col. KUTZ. There was no real competition between the two gas companies, because one of them served the territory on one side of

Rock Creek and the other served the territory on the other side of Rock Creek.

The CHAIRMAN. Was there any law prohibiting one company from going into the territory of the other?

Col. KUTZ. Yes, sir.

Mr. CLAYTON. One of the great reasons was that the cities of Georgetown and Washington were separated by Rock Creek, and it was difficult to get mains from one side to the other.

Col. KUTZ. The other legislation we ask in behalf of the gas company is the same which we have incorporated in the bill recently reported to the Senate in behalf of the Washington Railway & Electric Co. and the Potomac Electric Power Co. That is the privilege of financing needed extensions and improvements through stock issues as well as bond issues. The public utilities law gives us power to permit the financing of needed extensions through bond issues, but does not authorize us to permit such extensions to be financed through additional stock issues, and I think that is an unwise provision of the law. The Washington Railway & Electric Co. and the Potomac Electric Power Co. are seeking a modification of it in their behalf, and I ask that same privilege be given to the gaslight companies. They are desirous of financing their extensions through stock issues, and we believe it would be a good thing for the public to have them finance it in that way.

Mr. FOCHT. Do I understand the Capital Traction Co., on account of its superior earnings, is not inclined to merge, notwithstanding the possibility of reduction of overhead of both companies by reason of the merger? Since the Capital Traction Co. has an asset developed either by peculiar circumstances of the location of its lines, or even the ability with which it has been handled, what do you propose to compensate them for that large and more valuable asset than the other company in order to get to an equitable basis of merger? Do I understand that you propose to literally put on the screws and absorb a portion of the earnings of that company, which happens to be in a more fortunate position than the other, in order to bring it down to the level of the other; or do you, as I understood you to say in speaking of the Esch-Cummins bill, intend to apply the provisions of that bill? I have not followed this very closely. I would like to know how you are going to equalize that matter in justice to both companies.

Col. KUTZ. We think the difference in the earning power of the two companies is not due primarily to superior management on the part of one, but is due to a difference in the value of the franchises which they enjoy, franchises that have been granted by Congress, franchises for which they paid nothing. The fact that the two companies are both well managed, and practically equally well managed, I think, is shown by the fact that the cost of operation of cars on the two systems per car mile does not vary materially on the two systems. So that the great difference in earning power is not primarily due to superior management, but to a superior value of the franchise, for which they paid nothing. Now, why should not the people get the benefit that flows from that franchise right? Why should those benefits go to the companies, who paid nothing for them?

To illustrate that difference in the value of franchises, let me repeat an illustration that I used some time ago. If you grant to a

flower vendor the privilege of selling flowers in Washington at Eleventh and F, he will pay you something each year for that privilege of occupying a public space at that busy corner. If you ask him to accept a similar privilege in Anacostia at the corner of Nichols Avenue and Good Hope Road, he probably will ask you to pay him if he had to stay there and sell flowers each day, because he would not make expenses.

That is the way I look at this street car problem. One company owns a valuable privilege on the streets of the city, for which they pay nothing. The other company is serving sparsely settled territory on the outskirts. It is entitled, in my judgment, to compensation for running cars at 10 different points to the District line rather than paying a franchise tax for that privilege. I believe that by substitution of the excess-profits tax, as we have proposed, you will be exacting from those companies returns that are commensurate with the value of the franchise privileges which they enjoy. I do not think it is putting the screws on the Capital Traction Co. I think it is only giving back to the people that part of the benefits that they are entitled to have.

The CHAIRMAN. Do you not think it would be a fair proposition if these companies were merged, so that the outlying lines would get the benefit of the thickly settled portions of the city?

Col. KUTZ. Yes, sir; absolutely.

The CHAIRMAN. That, to me, seems the logical way to settle this whole proposition.

Col. KUTZ. It is, and it will never be settled until the street car companies of the District of Columbia are run under a single head or control or ownership. That is the one thing that we want to accomplish, and our only difference is as to whether it can be accomplished more quickly and more satisfactorily in one way or in another way.

Senator POMERENE. What is being done now between the companies with respect to voluntary consolidation?

Col. KUTZ. I do not think that anything is being done, Senator. I would like to say for the Capital Traction Co. that Mr. Hamilton intimated they were not unwilling to merge.

Mr. FOCHT. I was trying to get some information as to the method of procedure, so as not to destroy any equity the stockholders might have in it, and do justice to the other company, which needs help and should have it.

Col. KUTZ. Yes. I believe both these companies may be said to have expressed their willingness to merge. The only difference of opinion is as to the terms of the merger. One basis, of course, is the valuation of the property as made by the Public Utilities Commission. That would doubtless be agreeable to the Washington Railway & Electric Co., but would not be agreeable to the Capital Traction Co., because it ignores the great difference in earning power. Another basis might be the earning power itself, the capitalized earning power. That would be highly advantageous to the Capital Traction Co., but would not be conceded for one minute by the Washington Railway & Electric Co. as being reasonable. Then there is a third, the basis of valuation as represented by the market value of

their securities. The market value of their securities is not the same as their earning power. There is a different ratio. They have different elements. One is the fair value for rate making purposes, one is the exchange value as shown by their earning power, and the other is the exchange value as shown by the market price of their securities.

But I think, gentlemen, that taking all three of those factors into consideration and giving a proper rate—that it ought to be possible to arrange terms of merger that would be fair to both corporations. And it seems to me that unless we exercise some pressure on them, as we propose through this excess-profits tax, that merger will not come about voluntarily.

Mr. FOCHT. It has been suggested that the Washington Railway & Electric Co. is possessed of an asset in the form of a power plant which, added to that of the railroad, would very closely equalize the value of the other road, and if that merger occurred the Capital Traction people would most likely feel like carrying out the ideas which you have expressed.

Col. KUTZ. The Washington Railway & Electric Co. earned approximately 5 per cent last year. We assume it is going to earn the same amount this year.

Mr. FOCHT. On their common stock?

Col. KUTZ. No; on the fair value of their property as ascertained by the commission. We can not make the computation on the stock, for the reason that their securities cover not only the property of the railway company in the District of Columbia but certain street railway property outside the District. It also covers all the stock of the Potomac Electric Power Co. They own that stock and have issued their own securities against it. So, before you could compare the fair value of the street railway property with the total amount of their securities you would have to allocate those securities. The company, as a matter of fact, last year did pay 5 per cent on its preferred stock and paid into its surplus fund $226,000 which it might have paid as dividends on the common stock if it had seen fit to do so. In all our computations we dealt with the fair value as ascertained by the commission under the provisions of the public utilities law. That fair valuation is being contested in the courts.

The CHAIRMAN. What is the difference in the valuation between the commission and the owners?

Col. KUTZ. It is very great. I can not give you the figures offhand. My recollection as to the Potomac Electric Power Co. is that our estimate was about $10,000,000, and it seems to me the company claimed at that time $23,000,000, more than twice as much.

Senator POMERENE. That was their asking value. What was their trading value?

Col. KUTZ. I do not know about that, Senator.

In the case of the Capitol Traction Co., the difference was not so large. Our valuation, I think, was about $14,000,000, and the company's valuation was approximately $20,000,000. There was a difference in all the other utilities.

But that case, what we call the master valuation case, is now in the court of appeals and is to be argued on the second of next May. I assume that whichever side is unsuccessful in the court of ap-

peals will exercise its privilege of appealing to the Supreme Court of the United States.

But it does not seem to me that these valuations, which must necessarily take some considerable time before we get a final decision, should affect this merger question. All our valuations were made on the same basis. If the courts finally say they are too low by 10 per cent, or 15 or 25 or 50 or 100 per cent, whatever it may be, all the utilities will have their valuations increased in like proportion, because we applied the same fundamental principles to all of them. We had the same engineering body inventory the property and applying the ascertained cost, and we had the same set of accountants going into their books, and we tried to apply the same principles in our findings of fair valuation. So that I feel that while that may be a long drawn out case, I do not see how, if it were settled to-morrow, we would be any nearer a merger of the street railway companies. I think the merger question should be handled separately.

There is one thing I would like to refer to. In the bill as reported to the Senate in February, there is no reference made to the valuation proceedings. We would like, if that bill is to be again reported in the form in which it was in the previous report, to have a paragraph inserted that will permit these valuation proceedings to be carried through the courts to an ultimate conclusion. In other words, we would not like to have the merger upset all the other things that have heretofore been done in finding the fair valuation of those companies. Recently, in a rate case before the commission, we questioned the company's attorneys on that point, and they said they had no objection whatever to such a paragraph.

Senator CAPPER. Will you submit a paragraph to cover that?

Col. KUTZ. Yes, sir. It is contained in the Woods bill.

Senator POMERENE. Where do you find in this bill as it now is anything that will interfere with the proceedings, either of the commission or of the courts? I do not see the force of your position.

Col. KUTZ. Well, it is only probably as a matter of precaution that I suggested that. I think the companies—at least Mr. Bowen, vice president, so expressed himself—would want the valuation cases to go forward.

Senator POMERENE. I do not know that I see any objection to it, but I do not see any virtue in your proposition.

Col. KUTZ. I think they would automatically go forward.

Senator POMERENE. Certainly. We are not interfering with that.

Col. KUTZ. There might be some question as to what constituted the fair valuation of the merged corporation, as to whether or not it was the sum of the fair value of the two constituent corporations.

Senator POMERENE. I suspect if you have a horse worth $400 and I have one worth $600 the team is worth $1,000.

Col. KUTZ. I think that might be true if the only elements of value were based on the physical properties, but they are based on intangible elements of value, and those intangible elements might change. In other words, the sum of the two might not represent the value of the combined properties. Our suggestion is that nothing contained in this proposed legislation shall be construed to affect the proceedings

for the valuations of the several component companies, which may be merged or consolidated under the provisions of the proposed act, but that such proceedings and actions and suits now pending should proceed to final decision in the names of the now existing companies, and the fair value of the properties merged or consolidated corporation used and useful for street railway and electric power corporations within the District of Columbia should be the sum of the fair values of the several companies which may enter into the merged or consolidated corporation aforesaid, as finally ascertained plus any additions subsequently made. I think that would be a wise provision to incorporate in the law, because I do feel that is a question which perhaps can not be taken for granted.

Senator POMERENE. I see about as much force in it as I do in a provision that would be intended to repeal the decalogue.

Senator CAPPER. Is there not another factor of earning capacity? It seems to me we are getting into an intolerable situation here, with one company earning 11 per cent profit and the public paying an 8-cent fare. As long as that goes on it seems to me we are going to have a situation that is pretty hard to adjust on a fair basis.

Col. KUTZ. It was with that hope that the excess-profits tax was suggested to be substituted for the tax on gross receipts. We think that that would help that situation.

Senator CAPPER. The bill that was recommended by this committee, shortly before the adjournment of the last session of Congress, does not in any way interfere with the excess-profits plan, does it?

Col. KUTZ. I think not, except it might have to be fitted into it. Under the present law street railway companies pay 4 per cent on their gross receipts, and the electric light and power company pays 4 per cent on its gross earnings. The difference between gross receipts and gross earnings is the value of the raw material entering into the manufacture of the power. Is that not right?

Mr. HAM. That was the interpretation put upon it by the court.

Col. KUTZ. There was a decision by the court in the gas case that drew that distinction. If the power company is merged with the railway companies under the name of the railway company, I presume it would pay a 4 per cent tax on gross receipts, and the tax on gross earnings would be automatically abolished. The excess-profits tax, we have drafted here, seems to be practicable so far as the railway companies are concerned, and it might be applied to the merged corporation without any change. I have not thought about that.

Senator CAPPER. The commission is agreeable to the bill the committee recommended last February, except that you think the paragraph should be added that you suggested a few moments ago?

Col. KUTZ. Not only that, but we feel that in that bill we would like to see the merger of the street railways precede the merger with the power company or be coincident with it. We feel that without that we might lose the opportunity for a merger. But, even if that had been adhered to, we still feel the bill should be supplemented by the addition of the excess-profits tax.

Senator CAPPER. Do you think that should come first?

Col. KUTZ. No; I think that should follow.

The CHAIRMAN. Mr. Commissioner, do you wish to say anything?

STATEMENT OF HON. JAMES F. OYSTER, MEMBER OF THE BOARD OF COMMISSIONERS, DISTRICT OF COLUMBIA.

Mr. OYSTER. Mr. Chairman, Col. Kutz has followed this subject for some time, and has now expressed himself on the lines the former commission had in mind. We have not had an opportunity to get together, except for a while on Saturday, when we were asked to come here to talk over this proposition. We practically agreed upon the Woods bill as being about what we thought we could agree on. Mr. Rudolph may or may not have had some experience before the hearings we had last week and the week before. I gathered my information, what little I have, from what was said at those hearings. My thought, after the testimony taken there, was that these companies are willing to get together, they should get together, they must get together for the benefit of the public. The present rate of fare is extended for five months.

Now, we had hoped that you people might have taken some action in the premises, and at the same time we could get a decision from the court in regard to the electric power company's rates. I will be perfectly frank and say to you that so far as I am concerned personally, although it may not have been an opportune time, that I was favorable to have the present electric rates continued. The public is now paying 10 cents, and it affects but 41,000 consumers. My hope was that if they would let that rate stay where it was and reduce the street car fare to seven cents the public would be benefitted to the extent of about $500,000.

The Capital Traction Co. had very little to say, naturally, because every move we make to help the other people they are being benefitted by. It should not be so, in my opinion.

I went further and suggested that a committee of six be selected, two from each company and two from the commission, to formulate a plan of merger, so as to furnish a basis for legislation. I believe if we could get those people together on a proposition of that kind we would have no trouble in doing something that will be fair to the public.

It might seem a hardship on some of the consumers of electric light, but there are only 41,000 consumers, and why should 41,000 consumers be protected to the disadvantage of the large number of street car riders? In addition to that, the consumers of electric light are riders on the street railways. Our thought was there should be a merger. How far you can go as a matter of law, whatever you do here, my thought was it would be thrown in the hands of the court and be prolonged for several years, and if we could get them together by a mutual agreement that would be acceptable all around, which I believe can be done, it will give us a lower rate of fare, the people will get that benefit, and the companies will not be seriously disturbed. The Washington Railway & Electric Co. needs help, and to get the help they are entitled to the public will be greatly inconvenienced. So that influenced us to extend the present rate until we could collect ourselves and form some plan of a compromise. I believe it can be done. Part of these people are willing to do it. If we can do it—I may be wrong; I don't know how my colleagues feel—but from a business point of view I say they can get together, and must get together.

Senator POMERENE. I was going to inquire if you have suggested some scheme of that kind? My judgment is that these different interests, if they would get together under the general supervision of the Public Utilities Commission, could perhaps make a more equitable adjustment than could be made by the Congress of the United States if it has to use a club to get them together.

Mr. OYSTER. You will not have to do that.

Senator POMERENE. I think the common-sense view of the situation is that they should get together. There is no doubt about it. The street-railway business has become a sort of natural monopoly. It seems to me the terms of the merger could be so arranged as not to be unfair, either to the bondholders or the stockholders. Personally, I would feel very much encouraged if the different interests would come in and say they have a plan by which they can get together, and all they want is authority from the Congress of the United States to merge. Maybe we can not do that. If we can not, then I am willing to help apply the club.

Mr. OYSTER. I believe it can be done if these people will act in good faith.

Senator POMERENE. I should think so.

Mr. OYSTER. I have reason to think that a 10-cent rate for electric power would help conditions very materially, but it will be a long time before we could get less than a 7-cent fare. I can not help but feel the public would be benefited materially.

At the same time we must take into consideration the investments of these companies. They assured us if they can get this help they are going to give better service. If they can not we will have to do something else. That is the way I feel about it. I think, gentlemen, if you encourage this committee I believe they can be made to get together. If they can not, I am like the Senator, I will put the screws to them.

Senator POMERENE. What is your judgment about that, Senator?

Senator CAPPER. I think this committee has on several occasions made it very plain that they want this merger brought about just as quickly as possible. We have had several hearings here at which this question was entered into in one way and another, and it is rather significant that the Capital Traction Co. has never appeared here, and we have never had before this committee an intimation from them that they are willing to merge. It seems to me that as long as we maintain this situation, and the public pays high fares and the Capital Traction Co. gets big dividends, it is going to be the source of great dissatisfaction. You have got to get at that one way or another. They would much prefer this situation to go on, naturally. You must get at it in some way, either by reduction of fares or in some other way. Possibly your excess-profits tax plan may do it. If that is a good plan I am for it.

Mr. OYSTER. Just what it is the Capital Traction Co. wants I do not know, but I did get it from them that they are willing to merge, and I got it from those in authority. I thought this committee should be appointed to work out that sort of a plan, something that would facilitate legislation.

Senator CAPPER. I think the public is getting rather suspicious. We have been talking merger here for several years, and they do not seem to be much nearer a merger than they have ever been.

Mr. OYSTER. We could get together if you would help in these matters.

Senator CAPPER. I know the disposition on the part of this committee is to help. Do you not think so, Senator Pomerene?

Senator POMERENE. Yes; I do think so. I do not think there is any room for question but that it would be for the best interests of the public and everybody concerned to have these public utilities consolidated. I am quite willing to put this committee of six in a room and lock the door and keep them there until they do it.

Mr. OYSTER. And put a police guard over them.

Mr. CLAYTON. I move that committee consist of eight. The public should be represented.

Senator POMERENE. The Public Utilities Commission represents the public.

Mr. CLAYTON. Is that the view of the committee?

Senator POMERENE. I should say so.

STATEMENT OF HON. CUNO H. RUDOLPH, MEMBER BOARD OF COMMISSIONERS, DISTRICT OF COLUMBIA.

Mr. RUDOLPH. Mr. Chairman, I agree that the ideal way for the companies to get together is along the line and hope suggested by Senator Pomerene and Capt. Oyster. I also believe if you gentlemen would take up seriously the matter of legislation looking toward a merger that would be one thing that would make the two companies feel they would better get together. I have been over this Woods bill very carefully and given it considerable study and thought, and Col. Kutz has in very great detail represented practically my views of the bill as it is now proposed to be amended. I do not want to take up your time to go into further details about that.

I think Capt. Oyster did not make quite clear to the committee the rate the electric-light company is charging, which is 10 cents. The rate the Public Utilities Commission has authorized is 8½ cents, and 1½ cents are being impounded to depend upon the ultimate disposition of the case in court, whether the electric-light company will get it or not. The only authorized rate is 8½ cents, but we are paying 10 cents. We hope to get that 1½ cents back.

Mr. FOCHT. Is it an established fact that these various companies earn enough to make a reasonable return to all their stockholders and to justify a substantial reduction in fares? I understand that is the ultimate aim of this consolidation.

Mr. RUDOLPH. Yes.

Mr. FOCHT. They have sufficient income to do that?

Mr. RUDOLPH. There is no question about that.

Mr. FOCHT. We have been inquiring about what the Capital Traction Co. had in mind as to their being willing to merge. Why not have some one representing the Capital Traction Co. tell us about that?

Mr. RUDOLPH. The president of the Washington Railway & Electric Co. is here and the vice president of the Capital Traction Co. is here.

Mr. FOCHT. Why not have a word from them?

Senator CAPPER. I think this committee would like to hear from e vice president of the Capital Traction Co.

STATEMENT OF MR. JOHN H. HANNA, VICE PRESIDENT CAPITAL TRACTION CO.

Mr. HANNA. Mr. Chairman and gentlemen, I am very sorry Mr. Hamilton is not here to-day. Unfortunately, neither he nor I heard of this conference until yesterday morning. He has been sick, and is at Atlantic City. He called me up last night and asked me to say to the committee that he would be very glad to come back at any time he is wanted. He could not get back to-day.

As far as the position of the Capital Traction Co. is concerned regarding a merger, Mr. Hamilton has stated that on several occasions, and it was quite clearly stated in a letter addressed to Representative Zihlman, of the House committee. He simply repeated and put in a little more concise form what he had said about it at the hearings before the House committee in the early part of 1920. That shows we have never opposed a merger. There has been a very strong feeling that the reason the merger has not been brought about was because the Capital Traction Co. did not want it. It is a very natural feeling, because from the viewpoint of the stockholders anyone could see they would be pretty well satisfied with things as they are now.

The very great difficulty is that the stockholders are the ones who must finally decide this matter. They own the company; the management simply represents them. They have the control of the Capital Traction Co. There are somewhere about 3,000 stockholders—no very large holders—and neither Mr. Hamilton nor myself or any other member of the board of directors can tell what the stockholders will do when it is put up to them, as it will have to be. Mr. Hamilton has only stated his own viewpoint and that of the board of directors.

Senator POMERENE. Let me ask you a question at this point. I do not mean to ask a specific question, but evidently this consolidation has been in the minds of your company and of the other company and the public generally.

Mr. HANNA. Unquestionably.

Senator POMERENE. Have you not got in your own mind—I do not ask you what it is, for I do not think that would be fair—but have you not got in your own mind now some tangible proposition you would be willing to make to the other company so as to get together at a certain fair valuation of your property per share and a certain fair valuation of the other? There should be a certain merger valuation in regard to it. I do not see why it is impossible to get together on this matter at all. I can understand how there can be differences of opinion, but I certainly feel that they can get together.

Mr. HANNA. Personally, I think so, without any question. I do feel that the difficulties are probably greater than are larger appreciated.

Senator POMERENE. I can understand that.

Mr. HANNA. The fact is, as has been said before, at the present time it is against the law for them to consolidate. The La Follette amendment prohibits it.

Senator POMERENE. It is to be presumed that your consolidation is contingent upon repeal of that provision and the authorization of a consolidation.

Mr. HANNA. Yes, sir. I can only say that the Capital Traction Co.—and I am sure I am safe in saying that Mr. Hamilton will be more than glad to join in any effort that may be made toward that end. Neither he nor any of us have at the present time any definite, tangible proposition that could be made, but I am quite sure that such a proposition could be worked up.

There are some things that have been brought out here to-day that I would like to speak about. Reference has been made to excessive dividends and earnings made by the Capital Traction Co. During 1920 the Capital Traction Co. paid a 6 per cent dividend. It has never paid more than that until the dividend paid on April 1, 1921, which was at the rate of 7 per cent. We do not think that 6 or 7 per cent is an excessive rate. We feel that it is a very moderate return on the investment.

We also call attention to the fact that the amount per passenger required for a dividend is not a large amount. The 6 per cent dividend absorbs 0.9 of a cent for each revenue passenger on our line last year. If that had been 7 per cent, it would have been 1.1. That is a comparatively small part of the total rate of fare. I think it is smaller than is generally understood.

The Capitol Traction Co. does not feel that it should be penalized for being prosperous. It does not feel that it is responsible for the present situation. While I believe that probably a tax on the net income instead of a tax on the gross income is a more scientific form of taxation, still I feel the 50 per cent tax, particularly if applied to our earnings of 6 per cent, not on capacity, but on the commission's fair valuation, is not a tax but a penalty. For that reason we do not think it would be the fair thing to do, because it would absorb practically all our surplus earnings. It is true, had we operated last year under such a tax, it would still have left us a return that would have been fairly reasonable, but we do not think it is a fair basis of taxation. We do not believe in the justice of passing legislation purely as a penalty on our company, simply because we are prosperous.

The Senator said we have not appeared before this committee at any of these hearings, and seemed to think that indicated a stand-off position on the part of the company. The only hearing that has been held this year by this committee, that I know of, was held on the bill which provided for a merger between the Washington Railway & Electric Co. and the Potomac Electric Power Co. Before that hearing there had been no indication that anything relating to a merger of the Capitol Traction Co. would be included in that bill. We felt, and I think, properly, that a bill providing for a merger of the Potomac Electric Power Co. and the Washington Railway & Electric Co. was a matter in which we were not interested.

I am very sorry Mr. Hamilton is not here to-day. Under the circumstances, he could not be here, but he will be here at any time the committee desires.

I believe a statement was made about the rate of dividend, that we paid 11 per cent. We never did anything like that. Six per cent is the best we ever paid.

Senator POMERENE. The last quarter was at the rate of 7?

Mr. HANNA. Yes; the first quarter of 1921.

Senator POMERENE. What were your earnings in the past, what percentage?

Mr. HANNA. The net income on stock I do not recall; I could get that information for you. As reported in the last hearings our earnings for 1920 were about 10 per cent on the commission's fair valuation. The net income of the company last year, after paying bonded interest, was, I believe, about 10 or 11 per cent on the capital stock. Of that we paid a 6 per cent dividend.

Senator POMERENE. What is the difference between capital stock and book value?

Mr. HANNA. Our capital stock is $12,000,000. Our bonds outstanding are slightly under $6,000,000; about $5,800,000. Our book value is considerably larger than that now, because we have been putting back into the property some earnings and some of the actual money covered by depreciation reserve in the last year or two. My recollection is—I would not state what the book value is, because I have not the figures with me. All that information is available at any time requested, and is on file in the office of the Public Utilities Commission in our report of 1920.

Mr. FOCHT. Has the other company ever, at any time, approached you or the commission in regard to a merger?

Mr. HANNA. In the year 1917 I believe some conferences were held between the two companies. The Washington Railway & Electric Co. initiated those negotiations. Committees were appointed from the two boards of directors and we had a number of meetings lasting over two or three months, but were not able to arrive at any agreement as to a basis of merger.

Mr. FOCHT. How far apart were you in millions of dollars?

Mr. HANNA. That is a question.

Mr. FOCHT. I presume you followed the usual method of absorption of these securities. What is your idea of a basis, as Senator Pomerene asked you, or, rather, if you do not have a basis, and Mr. Hamilton has no basis, what was the basis offered you by the other company for the distribution of these securities?

Mr. HANNA. Those negotiations took place four years ago, and I have no memoranda with me, and it might be entirely unfair to attempt to state from my recollection anything about them, particularly as conditions now are quite different from what they were at that time.

Senator POMERENE. Do you mean that the conditions of the company are different?

Mr. HANNA. Yes; and valuation conditions are different. Our position then and now is that the earning value of the company is the proper basis for a merger. That has been stated by Mr. Hamilton.

The CHAIRMAN. In your judgment, would the merger of the electric light and power company with the trolley company hasten or retard the merger of the trolley companies?

Mr. HANNA. I do not think a merger between the street railroad companies would be possible if it were not understood that it would

carry with it the Potomac Electric Power Co. and the Washington Railway & Electric Co.

The CHAIRMAN. That would be one of the conditions upon which you would merge?

Mr. HANNA. I think it would, without any question. If a merger is to take place the three companies should be merged, because the Potomac Electric Power Co. is a very important part of the earning value of the Washington Railway & Electric Co. And the actual physical conditions are such that a merger of the two companies would be extremely beneficial all around. We have a comparatively small power plant and they have a large one. Our plant is sufficient for our own needs. Their plants must be continually added to to meet their very rapidly increasing needs. The two would probably work satisfactorily together, and some general arrangement as to the distribution of electricity and switching of cars would make it possible and necessary to combine all three.

The CHAIRMAN. That would save power very considerably, would it not?

Mr. HANNA. Yes, sir; it would save some power, but it would particularly save in the distribution of supplies, in building signal boxes, and in transmission and distributing lines.

Senator POMERENE. Are you willing, in behalf of your company, to accept Capt. Oyster's suggestion to appoint a committee of two, to meet with a similar committee from the other company and from the public utilities commission, to negotiate with respect to a merger?

Mr. HANNA. I have no authority to do that, but I have no question in stating that Mr. Hamilton will agree to that. It is a matter for him to handle, and I will communicate with him immediately.

Senator POMERENE. As one member of the committee, I think it ought to be done.

The CHAIRMAN. I also think it should be done.

Mr. HANNA. I will communicate with Mr. Hamilton not later than to-morrow.

The CHAIRMAN. Something along that line should be done at once.

Senator POMERENE. I will also agree, if they do not do something, we will buy a pair of thumbscrews.

Mr. WARNER. I might say that Mr. Hamilton's position with respect to the situation can be found on page 36 of the hearing held in February by this committee. It is an extract from the House hearings of January, 1920. That was the statement he made in January, 1920.

The CHAIRMAN. I think the suggestion of Capt. Oyster is very good. If that can be done soon, we will know what legislation will be needed to accomplish the result.

Mr. HANNA. I have a copy of this letter to Mr. Zihlman if the committee cares to have it.

The CHAIRMAN. That statement has been incorporated in the printed report.

Mr. HANNA. I am referring to a letter from Mr. Hamilton to Representative Zihlman, of the District Committee.

The CHAIRMAN. That may be incorporated in the record at this point.

(The document referred to is as follows:)

MARCH 1, 1921.

Hon. FREDERICK N. ZIHLMAN,
House of Representatives.

MY DEAR MR. ZIHLMAN: Yours of February 25, subject "Merger of street-car companies in the District of Columbia," received.

No plan of merger has ever been submitted to the stockholders of the Capital Traction Co., and the company, through its stockholders, has never taken a position on the question and has never been called upon to do so, and, as you know, a voluntary merger can only be concluded by the stockholders. The managers of the company, its officers, and directors, however, have for several years held and publicly expressed the view contained in your letter—that a consolidation should be worked out on a basis fair to the public as well as to the security holders of the company.

This view was given definite expression by me in a letter to Mr. William McK. Clayton, chairman of the utilities committee of the Federation of Citizens' Associations of Washington, of date January 24, 1920, wherein I stated—

"The management of the Capital Traction Co. has never opposed, but on the contrary is on record in the expression of a view favorable to a merger by agreement, fair and protective to its security holders and to the public, and providing a sound and safe direction."

In this letter I referred to the difficulties confronting any effort to effect a consolidation and said:

"These, however, in my opinion, are difficulties that may be overcome and overcome more certainly and more usefully by the stockholders through the application of sound judgment and business sense than through compulsion in the direction of public ownership, or through tax provisions which, apparently sound in principle, are sought to be enacted to penalize one company for the benefit of another."

The board of directors approved the position taken in this letter and in recording its approval stated as among the elements that should be taken into account in the working out of a fair merger agreement, the following:

(*a*) A merger should include the property of both companies, the lines within and without the District of Columbia, and the Potomac Electric Power Co.

(*b*) The basis of merger should be the relative earning or exchange value of the companies.

(*c*) A provision for service at cost, in order that the rate of fare might be automatically adjusted to conditions.

(*d*) A management that would command the confidence of the public and the security holders, and in this management, as well as in the negotiations for merger, the public should have representation.

(*e*) A plan of merger so worked out and approved by the commissioners should be submitted to the stockholders of the respective companies for their consideration, and if approved by them reported back to the commissioners.

The letter above recited and the action of our board of directors will be found fully set out and discussed by vice president John H. Hanna in his testimony before the House Comittee at its hearing in February, 1920, on H. R. 11753, entitled "A bill to further regulate public utilities in the District of Columbia," etc., in part 4, page 327, et seq., of the printed report of said hearings.

This view and position as to merger so often repeated in the past, is still the view and position of our management, and has not been in any wise changed by recent increase in receipts due to increases in fares not asked for by the compay. The permanent success and stabilization of the industry which would, in my opinion, follow a consolidation, which, to quote your letter "will be fair to the public as well as to the stockholders of the Capital Traction Co. and the Washington Railway & Electric Co.," is far more important and desirable than temporary benefits due to unusual conditions and from fares higher, perhaps, than is required by the company to meet operating expenses and to pay a reasonable return on the investment, and therefore, higher than the users of our line should pay.

I do not favor a merger by force either directly or indirectly applied.

Congress, of course, may in the exercise of its right of eminent domain condemn and take over the properties of the companies, or either of them, on payment in money of values fairly ascertained.

Congress may have the power, but I doubt its right, through the imposition of excessive taxes and otherwise, to hamper and destroy these properties. It

has the power to penalize through taxation, but I do not believe that Congress, in its wisdom, desires to so use its power. My belief is that Congress desires by legislation, helpful to the companies and protective to the public, to encourage and provide for a right conclusion and consolidation through a fair agreement of merger, and in this effort and direction it will have our cordial cooperation.

I am, and my associates in the management of the Capital Traction Co. are, in favor of such a consummation, and if Congress would enact a law permitting a merger, which is now by law prohibited, I believe that the wished-for consolidation could be brought about in the near future by the voluntary act of the parties in interest.

We think that such permissive legislation should contain a proper provision for the acquisition of the stock of dissenting minority shareholders on condemnation and payment in money of the fair value thereof.

I believe that in the statement by our board of position and of the elements to be considered in a plan of merger, referred to above, your questions as to the lines and properties which should be included, and as to service at cost, are fully answered. If, however, there is any other information desired which I may furnish, I will be pleased to make further reply.

Yours, very truly,

GEORGE E. HAMILTON, *President.*

STATEMENT OF MR. W. F. HAM, PRESIDENT WASHINGTON RAILWAY & ELECTRIC CO.

Mr. HAM. Something has been said about a merger this morning. I can say in behalf of our company that we are willing to participate in an inquiry such as Mr. Commissioner Oyster speaks of. We have no plan, but I can lay down a principle which we believe should be followed. That is that we are entitled to a reasonable return upon the fair value of our property. We want no more than that, no less than that, in a merger. We want what the law gives us now, what common law gives us, what your own utility acts gives us, a reasonable return upon the fair value of our property, nothing more, nothing less.

I am here particularly to urge upon this committee the passage of a bill similar to the bill that was voted favorably upon by this committee. We consider that particular action is essential, and it is essential outside of the question of merger, for these very important reasons:

That the Potomac Electric Power Co. is confronted with the need of financing. Since we were last before this committee we have had a report made by Stone & Webster, who are perhaps among the foremost engineers in the country, as to our power requirements. Their report has been submitted, and without attempting to go into details that calls for the expenditure in the next two years of approximately $3,000,000. In a period of 10 years it calls for an expenditure of approximately $10,000,000. In addition to that we have maturing in 1923 $5,000,000 of bonds. So that looking immediately to the next two years we have got to spend approximately $3,000,000. Looking ahead in the period of 10 years we have to provide for new construction and for refinancing $15,000,000.

The ability to finance at the present time is dependent to a considerable extent upon the financial structure of the company. The Potomac Co. will necessarily have to resort to a fourth mortgage, and as was stated before the Public Utilities Commission at a recent hearing, we pledged that commission that if we were given a

continuance of our existing 8½ cent rate we would immediately get busy in attempting to finance the requirements of this year and next year. We have now planned, although the decision was handed down only a week ago to-day, and are going quickly forward, and we believe that inside of two weeks we will go before the commission with a plan of financing which is absolutely necessary to carry us over this immediate two-year period.

There was a very gratifying feeling to me on the part of the public, as manifested here in this hearing, that the need of the Washington Railway & Electric Co. was for service. They felt that was more important than rates. If a company is not in a position to provide the finances to give service it is going to fall down in that very important respect. The Washington Railway & Electric Co., in case of a merger with the Potomac Electric Power Co., would be in a better position to finance both its needs and that of the Potomac Co. than the Potomac Co. is alone. I don't want you gentlemen to overlook the fact that the Washington Railway & Electric Co. is in the aggregate just as prosperous as the Capital Traction Co., given reasonable rates.

Senator CAPPER. Do you mean including the Potomac Electric Power Co.?

Mr. HAM. Including the Potomac Electric Power Co., it is just as prosperous, in the aggregate, as the Capital Traction Co., given reasonable rates. The fact is that the price of electricity is down 20 per cent or 15 per cent now, compared with the beginning of the war, and the price of car fares is up from 60 to 80. Is that an even distribution of the burden to be placed upon the community? We think it is not. I am very pleased to hear what Mr. Commissioner Oyster has said here to-day, that he believes an injustice to the public is being done by this burden now being placed on the car riders, which should be carried by the users of electric light and power. It is the obvious way to get an immediate reduction in car fares. Given our 10 cent rate for electric power, and we could immediately put into effect a 7 cent car fare, which would very largely take away from the Capital Traction Co. these surplus earnings you are talking about. It is the simplest way, the quickest way. That is perhaps a matter for the Public Utilities Commission.

We believe by doing away with this inhibition in the existing law and considering these companies as one company legally, as they are in fact, would do a great deal toward getting immediate results, not only in reduction of car fare, but in equalizing the situation between the two companies. In that respect I have been at odds very openly with the commission. They have taken the other position. They are going to treat the light and power company as separate and distinct. The very thing happened which must have happened. The disparity in the earning power of the two companies became manifest. Their lines are in the dense part of the city; our lines are partly in the dense part, but very largely serve the suburban communities. That is a difference we can not overcome, and as was stated by the chairman of the commission in a former hearing, that has been overcome only for a good many years in our taking or benefiting from some of the earnings of the Potomac Electric Power Co.

Let me say that from 1900, when that act of Congress was passed, along down to 1917 we have been going forward and prospering under rates fixed by Congress, and it was not until the act of the commission in 1917 reducing electric-power rates from 10 to 7 cents and following the high cost of the war that the situation became serious. We were meeting the needs of Washington as ably and and efficiently as the other company.

Senator POMERENE. Do you mean the rates fixed by the commission would not have been too low had it not been for the contingencies of the war?

Mr. HAM. The 8-cent rate?

Senator POMERENE. Yes.

Mr. HAM. I think the 8-cent rate was too low, is too low. I think the matter of service is a thing that must be considered. We can not drive the electric light and power users away from this last two or three years. They are glad to pay the 10 cents, and the service is worth it. Our business has expanded in the last three years very much more than it ever has been. Electricity is the cheapest thing there is to-day, and it seems to me there is an uneven distribution of the burden when the city of Washington permits a reduction of 15 to 20 per cent in the rates for electric light and power and puts the burden of 60 to 75 per cent on the car riders, when to a very large extent that could be avoided by letting the Washington Railway & Electric Co. benefit through its ownership of stock in the electric light and power company with reasonable rates for electric light and power.

Senator CAPPER. About what were the earnings of the Potomac Electric Power Co. last year?

Mr. HAM. On its fair value last year it was 6.58—I believe it was.

Col. KUTZ. It all depends on the way it is computed. These two companies obtain their electric power from the Bennings power plant, owned entirely by the Potomac Electric Power Co. The railway company and the power company apportion the operating expenses of that plant in accordance with the amount of power each takes out of it, but the railway company last year paid no part of the fixed charges of that power company. If that be taken into consideration the company earned nearer 9 per cent than 6.58 on its fair value last year.

Mr. HAM. I think that would make a difference of one and a fraction per cent.

Col. KUTZ. That was a question of the Federal income tax. If the two be considered, the earnings of the company last year, I think, by their own statement, were approximately 9 per cent.

Senator CAPPER. The bill recommended by our committee in February was satisfactory to your company, was it not?

Mr. HAM. We have two amendments to suggest for the consideration of the committee, which we will hand to the chairman.

One was along the line mentioned by Col. Kutz about continuing the valuation proceedings in their present status. I am inclined to agree with Senator Pomerene that that is an unnecessary action, but at the same time I don't see that it will do any harm. Neither party is unwilling to have these valuation proceedings continued. We do not want anything in the act to interfere with that.

Another amendment is to provide for the issue of additional stock in the place of bonds, to permit the issue of stock to pay for improvements and additions, in the place of bonds entirely.

The third point was to have a declaration by Congress that this company is entitled to earn a reasonable return upon the consolidated property of the electric light and power company and the railway company.

I will hand those to the chairman.

(The proposed amendments above referred to are as follows:)

A BILL To amend the provisions of an act relating to certain railway corporations owning or operating street railways in the District of Columbia, approved June 5, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Washington Railway & Electric Co., a corporation, be, and hereby is, authorized and empowered, as hereinafter provided, to acquire, use, operate, and enjoy all the estate, property rights, and franchises of the Potomac Electric Power Co., also a corporation: *Provided, however*, That the said power company shall not be acquired by the said street railway company unless and until consent and approval so to do first shall have been given by the owners of record of at least 75 per cent of the capital stock of the railway company and by the owners of record of at least 75 per cent of the capital stock of the power company. When the said stockholders of the two corporations shall have given their respective consents and approval for the acquirement aforesaid, then, upon filing with the recorder of deeds for the District of Columbia such extracts of the proceedings of the meetings of the shareholders of said corporations, showing such assent and approval, duly certified and attested under the respective seals of said corporations, the said recorder of deeds shall duly record the same, together with a copy of this act, in his office; whereupon all of the estate, property, works, rights, privileges, and franchises of said Potomac Electric Power Co. shall vest in, be held, used, enjoyed, exercised, and be enforceable by the said Washington Railway & Electric Co.; and thereupon the capital stock of the said power company shall be annullel: *Provided further*, That the existing liabilities of the Potomac Electric Power Co. and the rights of its creditors shall in no wise be prejudiced thereby: *And provided further*, That no action or proceeding to which the said Potomac Electric Power Co. is or may be a party shall abate in consequence thereof, but the same may be continued in the name of the party by or against which the same was begun unless the court shall order the said Washington Railway & Electric Co. to be substituted in its place. And thereafter the property so merged or consolidated shall be entitled to a reasonable return at all times on the fair value of the property of the consolidated corporation used and useful for street railway and electric power operations. The Public Utilities Commission of the District of Columbia in determining the reasonable return herein provided for shall give due consideration among other things to the transportation, heating, light, and power needs of the District of Columbia and the suburban community adjacent thereto, the necessity of enlarging and improving the existing facilities, of adequately protecting capital already judiciously invested therein and of inducing further investments of capital needed for such purposes at reasonable rates of return, all subject to all rights of appeal from any such order or decision to the several courts upon the same conditions as are provided by the existing law for appeals from other decisions of the said commission: *And provided further*, That said Washington Railway & Electric Co. is hereby authorized, subject to the approval of the Public Utilities Commission, to issue such stocks and bonds or other evidences of indebtedness and to execute such mortgages, deeds of trust, trust agreements, or other securities as may be necessary for any corporate purpose, including the financing of needed extensions, additions, betterments, or purchase of equipment.

SEC. 2. That the Capital Traction Co., the Washington Railway & Electric Co., the Georgetown & Tennallytown Railway Co., the Washington-Interurban Railroad Co., the City and Surburban Railway of Washington, and the Washington & Rockville Railway Co. of Montgomery County are hereby authorized to merge or consolidate all and singular their respective corporate rights,

privileges, and franchises and all their respective works and properties, real and personal, tangible and intangible, into one corporation and property for the ownership, management, control, and operation of all their said works, properties, rights, privileges, and franchises under such corporate name as may be adopted, under the following conditions:

(a) The said corporations may, by agreement in writing assented to by the owners of record of at least 75 per cent of the capital stock of each of them, agree to merge and consolidate into a single corporation and to own and operate all the rights, estates, works, properties, and franchises aforesaid owned by them under such corporate name as may be adopted and stated in said agreement and upon such terms and conditions not contrary to the provisions hereof as they may agree upon, but subject to the approval in writing of the Public Utilities Commission of the District of Columbia. Upon the execution of the said agreement in writing and its approval by the Public Utilities Commission and the lodging thereof in the office of the recorder of deeds for the District of Columbia for record as hereinafter provided, the said merger and consolidation shall be complete and the merged or consolidated corporation shall be and become a body politic and corporate under the name so agreed on. It may sue and be sued thereby; may adopt and have a common seal and may change the same at pleasure, and shall have, own, and possess all and singular the rights, privileges, and franchises of each of said corporations parties to said agreement, their works and properties, and may own, operate, control, and mortgage all the said estates, works, properties, rights, and franchises of the several corporations merged, and shall be subject to all the duties, restrictions, and obligations imposed by law upon the several corporations whose estates, rights, and franchises it acquires pursuant to the provisions of this act except as the same may be modified by this act.

(b) The approval of the stockholders herein provided for may be given by the consent in writing of the owners of record of at least 75 per cent of the capital stock of each company parties to said agreement or by the vote of the owners of at least 75 per cent of the capital stock of each of such companies represented at a special meeting called and held as prescribed by the by-laws of the several companies or by law. When a certificate shall be filed with the Public Utilities Commission of the District of Columbia, signed and acknowledged by a majority of the board of directors of each of the corporations to be affected thereby and certified under the seals of each of said corporations showing the agreement for consolidation and merger and all of the terms thereof and its conformity with the provisions of this section, such certificate shall be presumptive evidence of the facts therein set forth and thereupon said Public Utilities Commission shall approve or disapprove the same and certify its action thereon by certificate to be attached thereto under its seal and if approved it shall forward the same with the certificate of its approval thereon to the recorder of deeds of the District of Columbia, who shall indorse thereon the day and hour of its receipt and record the same in his offices. If the commission shall disapprove the same, its action thereon and a statement of its reasons therefor shall be forwarded to each of the corporation parties to said agreement.

(c) Within 15 days after the filing of such certificate with the recorder of deeds of the District of Columbia a notice shall be mailed to each stockholder of record in each of such corporations by the merged or consolidated corporation, setting forth the time when and the place where such certificate was filed; and if within 30 days after the mailing of such notice any stockholder of any of the companies affected thereby shall give notice in writing to the merged or consolidated corporation that he dissents from such contract it shall be the duty of the merged or consolidated corporation within 60 days after the filing of such certificate to institute a proceeding for the appraisement of the shares of all of such dissenting stockholders. If any stockholder shall omit to give such notice of dissent within the period herein limited, he shall be deemed and taken to have assented to such contract. The said proceedings for appraisement may be begun by filing with the Supreme Court of the District of Columbia a petition setting out the names and addresses of record of each of the dissenting stockholders, with the number of shares, the name of the company in which they were held, and the par value thereof, and any other pertinent facts, and praying for proper process against said dissenting parties and the appointment of three persons to appraise the value of all such stock.

The Court shall thereupon direct such process to issue, by order of publication or otherwise, and upon its return duly executed shall appoint three such appraisers and designate the time and place for their first meeting. The court may fill any vacancy in the board of appraisers occurring by the refusal or neglect to serve or otherwise. The appraisers shall meet at a time and place designated, and after being sworn honestly and faithfully to discharge their duties they shall appraise the stock of each dissenting stockholder at its fair value without any regard to any appreciation or depreciation thereof as a consequence of such merger and consolidation, and said award when confirmed by the court shall be final and conclusive on all parties. The charges and expenses of the appraisers shall be paid by the merged or consolidated corporation. If anyone entitled shall refuse to accept the amount awarded him, or if for any reason it shall be impossible to make payment of the amount of the award to such person entitled to receive the same without unreasonable delay, the court may direct the same to be deposited in court. When the said company shall have paid or deposited in court the amount fixed by the appraisers as the value of the shares of the dissenting stockholder or stockholders, such stockholder or stockholders shall cease to have any interest in the said appraised stock or in the property or franchise represented thereby, and the merged or consolidated corporation shall receive back from the proper corporation whose estate, rights, property, and franchises it has acquired that portion of the consideration for such merger and consolidation or the proceeds thereof which otherwise would have been distributed to such dissenting stockholder.

If such payment or deposit is not made within 30 days after the confirmation of the appraisal, the amount of the award, with interest from the date of confirmation, shall be a judgment against the said merged or consolidated corporation, and may be entered, docketed, and collected as other judgments in said court are by law entered, docketed, and collected. If the said company shall omit to institute the proceedings hereinbefore required within the time hereby limited, any stockholder giving such notice may institute such proceeding by a proper petition on his own behalf, or, at the election of such stockholder, the estate, rights, property, and franchises of the corporation in which he was a stockholder shall revest in such corporation and the consideration received therefor shall be repaid to the said merged or consolidated corporation.

(d) Such merged or consolidated corporation is hereby authorized, subject to the approval of the Public Utilities Commission, to issue such stocks and bands or other evidences of indebtedness and to execute such mortgages, deeds of trust, trust agreements, or other securities as may be necessary for the purposes.

(e) Such merged or consolidated corporation is hereby authorized to finance needed additions and improvements to its property and equipment or to retire outstanding bonds or other indebtedness by the issuance and sale or exchange therefor of additional stocks and bonds or other evidences of indebtedness, under the same limitations as are provided by existing law for the issuance of additional bonds: *Provided*, That the certificate of the Public Utilities Commission showing authority for such issue shall first be obtained.

SEC. 3. *And provided further*, That nothing contained in this act shall be construed to affect the proceedings for the valuations of the several component companies which may be merged or consolidated under the provisions of this act, but such proceedings, actions, and suits now pending shall proceed to final decision in the names of the now existing companies; and the fair value of the property of the merged or consolidated company used and useful for street railway and electric power operation shall be the sum of the fair values of the several companies which may enter into the merged or consolidated corporation aforesaid as finally ascertained plus any additions subsequently made.

SEC. 4. That Congress hereby reserves the right to alter, amend, or repeal this act.

The CHAIRMAN. One of those propositions is covered by the amendment incorporated in the bill the committee reported, the matter of the issue of stock.

Mr. HAM. That was only in case of a merger with the Capital Traction Co. We would like to have the same provision applying

to the Washington Railway & Electric Co. if merged with the Potomac Electric Power Co.

The CHAIRMAN. Of course, this committee is very anxious to grant a merger with the Electric Light & Power Co., if that would be the first step with the merging of the trolley companies.

Mr. HAM. I understand that, but if we are not able to merge you do not want to destroy the ability of my company to serve the public.

The CHAIRMAN. No. We appreciate that service can not be given without a proper return. No company is going to do that.

Mr. HAM. We have been going on and furnishing service without a proper return. Since 1918 the railroad company has received $1,125,000 less than 6 per cent return upon its investment. That has weakened us.

The CHAIRMAN. Does that include your investment in your electric light and power company also?

Mr. HAM. No; that is figuring the railroad on the commission's valuation, entirely independent of the ownership of the stock of the power company.

The CHAIRMAN. I personally feel that it would be a saving to the people of Washington if the trolley fares could be reduced, even though the electric-light rates be kept at a reasonable rate, and I do not consider 10 cents a kilowatt an unreasonable rate, because that is the charge in many cities that I am familiar with.

Mr. HAM. I would like to read into the record this memorandum which I have prepared:

Increase in earnings of the Potomac Electric Power Co. if old retail rates prior to Order 223, dated July 13, 1917, were restored and present wholesale rates continued	$392,944
Decrease in earnings of Washington Railway & Electric Co. if straight 7-cent fare were established	446,878
Net reduction to Washington Railway & Electric Co. system	53,934
Reduction in earnings of Capital Traction Co. if straight 7-cent fare were established	429,875
Saving in amount paid by public with restoration of retail lighting and power rates and establishment of 7-cent fare:	
Saving in car fares, Washington Railway & Electric Co	446,878
Saving in car fares, Capital Traction Co	429,875
Total	876,754
Increase in lighting and power rates	392,944
Net saving to public	483,810

The actual cash saving to the public would be the total saving in fares, namely, $876,754, as the public is now paying the full 10-cent rate which is being, in part, impounded.

In other words, that shows a net saving to the public of $483,810, but an actual cash saving to the public of $876,754, because the public is now paying the full 10-cent rate, although a part of it is being impounded.

We are not asking an unreasonable electric light rate. There has been a difference of opinion on the Public Utilities Commission. Mr. Commissioner Gardiner wrote a very strong dissenting opinion from his two colleagues, advocating the establishment of a 12-cent rate for

the Electric Light & Power Co., in order that the burden on the car riders should be lessened. We did not go that far. We are only asking the restoration—not asking for it, but only suggesting it—if I was in charge of it, I would put back the 10-cent electric light rate and save the public $876,000 in car fare, and keep the condition of the two companies on an equality one with the other.

The CHAIRMAN. I think in a previous hearing it was said that if the companies were merged they would still consider the earnings of the two companies separately in fixing the rates, the electric light rates and trolley fares.

Senator POMERENE. That suggestion was made.

The CHAIRMAN. The merger in that evenet would not bring any relief to the people. If they treated the earnings of the companies separately—both of the trolley and light and power companies—then no reduction could be made.

Mr. HAM. The rate-making power is not lodged in the railroad company, but in the Public Utilities Commission, and what I have said is what I would do if I had that power.

The CHAIRMAN. We were quoting from the statement of the Public Utilities Commission at a previous hearing, and I think there were a number of questions asked to bring that out.

Mr. HAM. The merger of the railway company and the Potomac Company would have no effect on the rates of the power company or the railroad company. It would require affirmative action of the commission itself. They can do it now if they want to.

The CHAIRMAN. The question is whether the Public Utilities Commission would consider that as one corporation doing busines, treating the complete earnings of all its property, whether it would take the earnings of each individual——

Mr. HAM. Class of business?

The CHAIRMAN. The electric light and power as one unit of earnings, and the trolley company as another. If they still separate them it would not give very much relief.

Mr. HAM. No; not any relief. It all depends upon the action of the commission. Regardless of the theories of regulation, you must realize that you are up against a practical proposition. It is a situation which I do not believe can be found in any other city in the United States. If such a situation can be cured by the application of common sense methods, without injury to the public, and an actual help to the public, I think that should be done.

But that has nothing to do with the bill which is now under consideration by this committee. You come down to the fact that you have two railroad companies, with a difference in the class of service rendered, a difference in the value of the service they render, and no greater catastrophe could happen to Washington than to have the ability on the part of this company to continue its service to the community destroyed. If you have a situation of that kind, assuming that the two companies are kept separate, I can see but three ways to overcome that.

One is in the way I have outlined, by having, not unreasonable electric light and power rates, but no higher power rates than any other city, and thus bringing about the possibility of a reduction of car fare.

The second is through the application of a service system where we make an extra charge for the small consumer. That has been considered by the company, by the commission, and by the public. The public has expressed very clearly its disinclination for such a charge. The commission became convinced of it, and, I think, the company itself has very largely become convinced that it would be an unpopular thing to do, and we are not advocating it.

There is only one other thing to do, and that is to change the form of taxation. That is not going to make much difference in car fare. Assuming that it saves us $225,000—and I have no reason to doubt the accuracy of those figures—that is only about one-quarter of a cent per passenger, and that will not be very much of a reduction. We haul approximately 80,000,000 in the District of Columbia, so that would not make very much difference in the car fare.

I want to urge particularly, not necessarily as a part of this bill, but I do think action should be taken by Congress to relieve the two companies of this charge for traffic policemen. There is no other city I know of in the United States that places such a burden upon street railroad companies, and I do not see any justification for it from any point of view.

Senator POMERENE. Would you have the public pay the wages of watchmen at steam railway crossings?

Mr. HAM. No, sir.

Senator POMERENE. What is the difference between the two?

Mr. HAM. The difference between the two is that at certain crossings there would have to be an officer anyway. We have to bear the entire burden. At other places, where there is no street railway crossing, and there is equal necessity for protection of the public, the traffic officers are maintained at the expense of the public. Whatever might have been the reason originally, it is no longer good, because at all these busy corners where we now maintain traffic officers there would have to be one there anyway, whether there was a street railway track there or not. You take these corners like Ninth and F, Fourteenth and G, Ninth and the Avenue, all those points would have to be protected.

The CHAIRMAN. You take the ground that it is entirely due to congestion of general traffic, and not the trolley lines?

Mr. HAM. Yes, sir. Some years ago, when conditions were not so acute so far as automobile traffic is concerned, we had computations made before the commission showing the relative number of street cars and automobiles and pedestrians, and our traffic was almost a negligible quantity compared with the total.

Senator POMERENE. That classification was made from the standpoint of a street railway company, was it not? You did not compare the number of passengers that were in your cars with the number that were in automobiles and on foot, did you?

Mr. HAM. No, sir. In considering it from that angle, perhaps we would be in the majority during the busy hours.

Senator POMERENE. I was just trying to analyze it in my own mind. I realize that must be taken into consideration in determining the benefits which are to be conferred upon the public and upon your company. I do not quite see the philosophy of it.

Mr. HAM. This is to be borne in mind, I think, Senator: That you placed more of a burden upon the street railroads of Washington

than is placed upon them in any city in the United States, with the exception of New York City, when you order in the underground system of electrical operation. There is a burden which you should always bear in mind, even when considering the rate of car fare and in making comparisons with other cities. In the first instance, you ordered these companies to abandon the overhead wires before there was any known means of transportation which would permit it—away back, I think, about 1888 or 1889; perhaps a little later. So these companies made great experiments in cable construction and various other methods, and finally the underground trolley. The only other city in the United States having it is New York. That means large additional operating costs. Street-car fares in Washington, everything else being equal, ought to be more than in any city in the United States. I think that is an additional reason why you should not also put upon these companies in the form of traffic policemen a burden that is borne by no other community in the United States, so far as I know.

Senator POMERENE. Was not that burden taken into consideration in fixing the rate of fare?

Mr. HAM. Yes; it had to be taken into consideration in fixing the rate of fare, and I am saying it must be reflected in a higher rate of fare.

Senator POMERENE. If we had the corollary of that proposition, if the public paid these charges, would that reduce the fares?

Mr. HAM. Eventually. Of course, it does not mean very much in itself, but any reduction in the burdens placed upon these companies will eventually be reflected in a reduction of car fares.

Also, on the matter of paving. That is a relic, as Col. Kutz said, of the horse-car days. It is a condition which in numerous cities has received the most careful study in the consideration of street railway problems, and the companies have been relieved of a certain proportion of the paving burden in order to bring about lower car fares. In Cleveland and Cincinnati both they have taken such action. We do not think you should relieve us of the cost of maintaining pavements, making repairs, or anything that would be caused by the presence of our tracks or the operation of our cars, but when you come to the surfacing of the streets, and it has become necessary that the highways as a whole should be newly paved or resurfaced, then that original cost of new pavement or resurfacing should be borne as a public expense in our judgment. As has been pointed out, that is a burden which falls particularly heavy upon the Washington Railway & Electric Co., because the lines of the Capital Traction Co. are with a minor exception entirely located in the downtown section, where these street improvements are not taking place, whereas with our company these improvements are being pushed properly by the District authorities, putting a very large burden upon us.

Mr. OYSTER. Mr. Ham, if you had been successful in getting a 10-cent rate for electric light, do we understand you could have reduced car fare to 7 cents?

Mr. HAM. Yes.

Mr. OYSTER. I will not ask you to make a promise at this time, but if such a condition existed, could you give any reasonable assur-

ance, if you got the policemen off your hands and the paving off your hands, that you could give the public the benefit of a better rate? Of course, considering efficiency and service. That is very important.

Mr. HAM. All we want is what I think the public is willing to give us. I think they want to pay such a rate of fare as will enable us to render proper service and to keep reasonably prosperous. We don't want anything more. If conditions came around so that car fares could be made less than 7 cents, no one would be more glad to put that into effect than we would. But I don't think it is the rate that the public has the greatest interest in. I think it is in the service, and that has been repeatedly stated as the opinion of citizens and trade bodies. And that we have done as well as we have is what I am surprised at.

Mr. OYSTER. You could give us a 7-cent rate?

Mr. HAM. We could, and could have done it if that condition had existed. It is very important that this company be kept reasonably prosperous, because we have a lot of money to spend to get our property in good shape and keep it up.

Mr. OYSTER. I do not think anyone wants to deny you that.

Mr. FOCHT. If you had the overhead trolley, like they have in Philadelphia and Chicago, and you had relief in the matter of wages, and in the high cost of power, you could get the fare down as low as 5 cents, could you not?

Mr. HAM. I will say, if you are going to turn the hands of the clock back and say what you could have done, that is one thing, but when you are paying what you are paying for wages, when you are paying what you are paying for coal, any talk of going back to the 5-cent fare is sort of Rip Van Winkle stuff. It can't be done.

Mr. FOCHT. It is impossible?

Mr. HAM. Impossible; out of the question under existing conditions.

Mr. FOCHT. You were speaking of the various elements entering into the cost of carrying passengers, and there is one very important feature which I saw in connection with your road several years ago, much to my discomfort—that is, strikes. How far can the commission regulate the wages paid by public utilities? Do you not consider that an element that should enter into consideration of the probable reduction or increase of fares?

Mr. HAM. I have not particularly considered the wage matter as involved in any merger. The two companies are now paying the same scale of wages, and I think the maintenance of different scales by the two companies would probably be very bad policy, although it might become necessary if one company was unable to pay that amount. But I do not think street railroad wages have gone up as much beyond where they should be as some other kinds of wages.

Mr. FOCHT. How much of the 8 cents you now collect goes to the stockholders in dividends, on the 6 per cent basis? I understood some one to say 1½ cents.

Mr. HANNA. Nine-tenths of a cent.

Mr. FOCHT. How much does labor get out of the 8 cents?

Mr. HANNA. About 40 per cent; the platform labor, conductors and motormen. The total labor, I think, is 60 per cent of the

operating expense; of the total revenue—that would be in our case—it is approximately 40 per cent.

I think, Mr. Focht, that possibly I can give you some information that might answer your previous inquiry to Mr. Ham. The contract we have with our employees expired a year ago, and provided that the board of arbitration, in case of any difference between the men and the company, should be the District Commissioners, which is the same as the Public Utilities Commission. When that contract was made for three years the men objected to that on the ground that the District Commissioners were representing the public, and were in fact parties to the contract. The new contract provides that the arbitration board, if one should be necessary, shall consist of one man appointed by the company, one man appointed by the men, the third to be selected by those two men, with the further provision that if that selection was not made within a limited length of time the District Commissioners should appoint that third man.

Mr. FOCHT. The thought was that some consideration should be given to the payment of labor, so as to eliminate the possibility of strikes as far as possible, particularly on account of the present railroad situation out in the remote sections, so as to avoid causing everybody living in those outlying sections to lose many days of employment and subjecting them to great inconvenience.

STATEMENT OF MR. WILLIAM McK. CLAYTON, REPRESENTING THE FEDERATION OF CITIZENS' ASSOCIATIONS.

Mr. CLAYTON. Mr. Chairman, I come here representing the Federation of Citizens' Associations, and authorized to speak for them as chairman of their committee on public utilities.

There is one phase of the matter we wish to call to the attention of the committee, and that is probably the only point at which we diverge from the position of the Public Utilities Commission. We oppose—and rightly so, we believe—the so-called excess-profits tax on street railways. We are not going into an argument as to its legality, but we do say there is no promise of a reduction of fares. There can not be; and the chairman of the commission has frankly made that admission, that he sees no reduction of fares in it. Consequently, for that reason if no other, what the people of the District of Columbia are asking from the hands of this committee and Congress is relief from what one member of the committee has said is an intolerable condition and burden placed upon the people by the present rate of fare. We ask relief from that, and we believe we are justified in doing it.

You speak of the 8-cent fare here, but under the present conditions 8,000,000 of people here are now paying a 9-cent fare to reach their destination. They pay that because they exchange from one line to the other, and must pay the 1-cent transfer. Not only that, but conditions are such now that a disabled veteran of the World War can leave the Treasury Department for Walter Reed Hospital, some 4 or 5 miles on a car line, and he must pay 16 cents if he has to ride, and he will have to ride on the line of both of these companies. I only mention that to show the condition that exists in the District.

Now, the matter of a merger has been gone over with the people here. Some six years ago the Federations of Citizens' Associations had the traction heads before it to see what they thought of the merger proposition, and both expressed themselves favorably to it at that time, particularly Mr. Hamilton and also Mr. Ham. The officers of the company had never expressed any other idea except that they believed in a merger, but when it comes to practically working it out for the benefit of the people they are not on the job. I do approve of the suggestion made by Commissioner Oyster, of the selection of a committee of two from the Public Utilities Commission and two from each railway corporation to see if they can not work out some legal plan of merger, and I believe if that gets to going and is taken hold of in good faith by the traction people, possibly it might be wise to suspend legislation at this time.

The CHAIRMAN. The companies could not merge without some additional legislation. They are not permitted to under the present law.

Mr. CLAYTON. That is true; but they have never in all the years past gone before Congress asking for legislation that would permit them to merge. They have been quiescent on that and satisfied with the status quo.

The CHAIRMAN. They have not been in the last year.

Mr. CLAYTON. They did get going the last year. I speak of the past more than the immediate future.

The Federation also believes in the repeal of the crossing policemen. It does not mean much to the people, but we believe that, as has been stated here, the burden should not be placed on the car riders. It is not on the company. It is paid by the car riders, because they must pay that themselves. They always have done that, just as they pay for the laying of the rails and the platform men and everything else. We believe they should be relieved to that extent.

How far we might go in regard to relieving them from paving between the tracks and 2 feet outside I am not prepared to say, but we do believe the principle is wise and just, and they should be relieved to some extent of that, and we believe that burden should fall on the general treasury of the District rather than on the car riders.

You should bear in mind, and I believe that you do, that we have a class of people in Washington who have none of the advantages enjoyed by the industrial classes in other cities. The large employer of labor is the United States Government, and the salaries are fixed, and when fares increase there is no escape from it. The situation in which those people find themselves I know does appeal quite strongly to the sympathy of this committee.

Now, in regard to labor, I can not understand why the Public Utilities Commission, if it can act as arbitrator in labor disputes, would not have the power to incidentally fix the rate of labor. Why it should not have something to say about the rate of wages, I don't know. But we would be in a cul-de-sac on the proposition, because both sides pay the same rate. If the lowering of the scale is suggested, the other side would oppose it. If you could reduce the platform men 10 per cent, or 50 cents a day, the aggregate would be very close to $500,000 a year. We submit we would prefer, the people would be very glad, to have the commission have the right to say what the rate of wages should be on these street railway companies.

Now, in regard to the larger proposition of merger, we point to the last finding of the Public Utilities Commission as an evidence of the inequitable situation in the District of Columbia by these two companies continuing to operate separately. Under the public utilities law they are obligated to find a just, reasonable, and nondiscriminatory rate, a rate of fare which is just, reasonable, and nondiscriminatory. They base that rate of fare, and rightly so, upon the rate of return permitted to be earned on the physical value of the road. Yet in the case of the Capital Traction Co. they are permitting, in their recent finding, a rate of return of approximately 11 per cent. Now, if under the law that is a just, fair, and nondiscriminatory rate to that company, then I say they are compelling an inequity and injustice to the Washington Railway & Electric Co., which, under the law, is entitled to the same just and fair return, but is only permitted less than a 6 per cent rate of return. If the rate of return allowed the Washington Railway & Electric Co. of approximately 6 per cent or less than 6 is a fair, just, and nondiscriminatory rate, then the rate of return of 11 per cent allowed the Capital Traction Co. is unfair and unjust, and somebody is being robbed, and it can not be any other people except those who use the lines of the Capital Traction Co. That is just exactly the situation we are in here by these two companies operating separately.

The people of the District of Columbia have stood for this principle. We believe in giving to each company exactly what it is entitled to. They are viewed not as one company, but as separate companies. They both hold independent charters. They are both viewed independently as far as operations are concerned. Give them both exactly what they are entitled to. If that had been done, we believe the ship of merger would have sailed somewhat closer to port than it is sailing now. That is how they arrived at the conclusion they did on this last finding. Instead of helping a merger, I believe they have practically administered chloroform to it.

The CHAIRMAN. Would it have forced a merger to force one company out of business entirely?

Mr. CLAYTON. There was no question of its being forced out of business. The company might claim it was losing money and might come back and ask for an increased fare to make up for it.

The CHAIRMAN. How could you say it was not being forced out of business when many trolley lines have been abandoned? Of course, they are not abandoning the lines in the cities, but they are in the suburban districts. If you want to destroy the growth of the cities, of the suburban parts of the city, then your view might be correct, but I think the commissioners, acting as the utilities board, did the proper thing in fixing a reasonable rate for the company receiving the least return.

Mr. CLAYTON. We did not ask them to cut the rate of return of the Washington Railway & Electric Co. We believe they should have given the Capital Traction Co. what it was entitled to. As to the inequality of that situation, it might be the Washington Railway & Electric Co. was losing money and it would ask for a higher fare, and the commission might grant a higher fare.

The CHAIRMAN. You believe in two fares—one for the Washington Railway & Electric Co. and one for the Capital Traction Co.?

Mr. CLAYTON. Yes; I believe under the law that is the only way the commission should treat them.

The CHAIRMAN. Do you not see the inevitable result of that?

Mr. CLAYTON. I see no other practical way to handle it with two companies operating independently of each other.

The CHAIRMAN. A company that is bankrupt could not merge with a company that is prosperous. They would go into the hands of receivers and go out of business, and the result in the end would be the suburban lines would cease to operate. Just as you will find in driving through my friend's State of Pennsylvania, practically all the suburban lines are out of business; no cars running on the lines at all, and have not been for years. That is the condition you would find in Washington.

Mr. CLAYTON. If the two fares were established, one fare on one line and one on the other?

Senator POMERENE. That would be an impossible situation.

Mr. CLAYTON. Take the other corollary. Suppose they run them for a five-months period, and they go before the commission and the Washington Railway & Electric Co. makes a showing which might justify a 10-cent fare. If you grant them that fare and grant the same fare to the Capital Traction Co., there is no inducement there for a merger. As long as the two companies can get what they need as independent companies there is no inducement to merge. I go with this committee in saying that I am the last one who would advocate the use of the club, or the use of force, but we have waited for 6 or 8 or 10 years for a voluntary merger, and I think under the equities of the situation we are entitled to suggest there be some pressure brought to bear to bring these companies together.

Senator POMERENE. Your plan would never bring them together.

Mr. CLAYTON. You may be correct about that.

Senator POMERENE. You would drive all the traffic that would go to the one away from that company and to the other. It would all go to the company that gives the lowest rate of fare. There can not be any question about that. You would bankrupt the other, and then you would never get a merger between the bankrupt company and the prosperous company. You could never do it in the world.

Mr. CLAYTON. That may be correct. That is the Senator's idea, and he may be correct in it.

What I want to impress upon the committee is that the people are so earnestly in favor of this merger that with all the present discomfort and crowded condition of cars they are willing to endure it longer if it will accelerate a merger.

I want to refer to another condition. I believe that under the present high fares there is a larger proportion of people in the street cars of Washington standing or compelled to stand than there were before the war, and consequently I say the service rendered has never been at any time the service that is required under the law, and which the people had a right to expect under the law.

Mr. HAM. I would like for the commission to answer right now whether that is a correct statement or not.

Mr. CLAYTON. I do not say it is a correct statement of fact. I say it is my impression.

Mr. HAM. The commission is here and can give the Senators the facts. They know whether those are the facts.

Mr. CLAYTON. I said before the war.

Mr. HAM. I thought you said during the war.

Mr. CLAYTON. No; I said before the war. I expressly excluded war conditions.

I don't use an automobile. I ride the cars every day. I have ridden them for 40 years. I am in contact with people who use them. That is the general impression of those who use them, that a larger proportion now have to stand, due to inadequate accommodations and congested conditions. And I don't say the companies are altogether to blame, because they have reached a point—one company on Ninth Street and the other company on Fourteenth Street—where it is impossible to run more cars. They have not got the track capacity. We have been urging extensions in relief of that, but we have not been able to get them. If these companies were merged in one company we could get those track extensions without any great cost upon the companies or the people. We are denied these necessary track extensions in Washington primarily because the companies continue to operate as two and not as one.

I go with the commission, and the association goes with them, on the proposition there should be no merger of the Washington Railway & Electric Co. and Potomac Co. without including the Capital Traction Co. I believe the equities of the situation are thoroughly before the committee, and I believe that if the proposition gets to going to the point of legislation it should be legislation that will authorize the merger of every street railway in the District of Columbia and the light company, and not pick out one or two companies and exclude the subsidiary companies from a merger. It should include all of them. I don't believe any substantial reason has been presented at this time which would prevent that character of legislation, except the matter of finance, which does not require immediate attention. It is a matter of at least two years, and we could go on just as we are, and I believe we could accomplish the merger of all of them and not merely a merger of the Potomac and Washington Railway & Electric. We stand with the Public Utilities Commission that this proposition standing alone, as proposed in this bill, would not only not accelerate the merger of the street railways but would probably do much toward preventing it.

The CHAIRMAN. Does anyone desire to speak further?

Mr. OYSTER. I think you made a statement you should correct. You intimated that most of the passengers were paying 9 cents.

Mr. CLAYTON. No; I didn't say "most." I said there were 8,000,000 people who paid a 9-cent fare. I assume they all paid the 8-cent flat fare. They would pay an 8½-cent fare if they used the tokens.

Mr. OYSTER. Do you know how many use transfers?

Mr. CLAYTON. About 4,000,000. The revenues of the companies were $80,000 each on the 2-cent transfer. For 1 cent it would be $40,000. That means 4,000,000 people, and taking the two companies it would mean 8,000,000.

Mr. OYSTER. As a matter of fact, there was only a difference of $16,000 or $17,000 on each road.

Mr. CLAYTON. I am only taking the figures presented in the last hearing.

Mr. OYSTER. That is the information I had, and the public got the benefit of it. Each road was transferring only about $16,000, which would not amount to very much.

Mr. CLAYTON. I took the figures, as I remember them, from the hearing, that were presented by the companies, that the revenue from each company was $80,000.

Mr. HAM. I think our receipts were about $60 a day on that 1-cent charge. That would make about $21,600, which would indicate about 2,000,000 people.

Mr. CLAYTON. Then they have fallen off from the last hearing. I will simply amend my statement my saying there are 4,000,000 people who under present conditions pay a 9-cent fare.

Mr. HAM. How many pay the 9 cents?

Mr. CLAYTON. I should say at least 10 per cent.

Mr. HAM. Ninety per cent pay the 8½-cent fare.

Mr. CLAYTON. Perhaps true.

Mr. FOCHT. Where are these transfers made?

Mr. CLAYTON. There is one at Seventh and Florida Avenue. They are at many points on the lines where the Capital Traction and the Washington Railway & Electric cross. There are some 10 or 11 points.

Mr. FOCHT. That is only recently.

Mr. CLAYTON. Only recently the 1 cent, but it was 2 cents before that. That was cut last year to 1 cent and is now continued at 1 cent.

The CHAIRMAN. If there are no further statements, the committee is ready to adjourn.

I think the committee is thoroughly satisfied that it is the desire of the people of Washington and everybody interested that we should have one trolley system in this city. What is the best means to produce the best results the committee will endeavor to solve, but I think the suggestion made by Commissioner Oyster is a very wise one. If that could be done, it would be very simple to know just what legislation would be desired. Of course, it requires some legislation to permit a merger, but as soon as the committee is satisfied what that is I have no doubt it will use every effort to have Congress grant it.

The hearing will now stand adjourned.

(Whereupon, at 1 o'clock p. m., the subcommittee adjourned.)

Y 4.D 63/ 2:R 13/10 C.1
Merger of street railw
Stanford University Libraries
3 6105 045 218 257

DATE DUE

STANFORD UNIVERSITY LIBRARIES
STANFORD, CALIFORNIA 94305-6004

GAYLORD